Mr. President, we have a separate amendment on that which I send to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 570.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter beginning on page 26, line 19 through line 8 on page 27 insert the following:

None of the funds in this Act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 (1989 Manual) or any subsequent manual not adopted in accordance with the requirements for notice and public comment of the rule-making process of the Administrative Procedure Act.

In addition, regarding Corps of Engineers ongoing enforcement actions and permit application involving lands which the Corps or EPA has delineated as waters of the United States under the 1989 Manual, and which have not yet been completed on the date of enactment of this Act, the landowner or permit applicant shall have the option to elect a new delineation under the Corps 1987 Wetland Delineation Manual, or completion of the permit process or enforcement action based on the 1989 Manual delineation, unless the Corps of Engineers determines, after investigation and consultation with other appropriate parties, including the landowner or permit applicant, that the delineation would be substantially the same under either the 1987 or the 1989 Manual.

None of the funds in this Act shall be used to finalize or implement the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in Federal Register, Vol. 55, No. 197, Thursday, October 11, 1990.

Mr. JOHNSTON. Mr. President, this amendment, which I have submitted, has been worked out in consultation with the majority leader, the Corps of Engineers, and others who are interested in this program.

What we did in committee, Mr. President, is provide that with respect to the section 404 Wetlands Permit Program, any regulations that were adopted under that program that did not comply with the Administrative Procedures Act could not be enforced with money provided under this bill.

What that practically means is that the regulations, or the manual, as it is called, which not only defined wetlands, but set forth the procedure under which the Corps of Engineers, EPA, and the Fish and Wildlife Service regulate wetlands—that the manuals must be adopted in accordance with the Administrative Procedures Act in order to be enforced.

In 1987, a manual was adopted setting forth definitions of what was a wetland and what was not, and providing in effect for some discretion in the administration of that program. That 1987 manual was adopted in accordance with the Administrative Procedure Act, which is to say, public hearings, notice, the right to make comments, the right in effect for citizens to be heard.

In 1989, another manual was adopted. This manual made tremendous changes in the wetlands program. It defined, for example, a wetland as being that which, in most years, for 7 days was wet at a level 18 inches below the ground.

When you consider the amount of wetness, particularly in my State, virtually the entire State is wet for 7 days during the growing season 18 inches below the ground. As a matter of fact, you could probably make that definition by saying at ground level, if only 7 days are being dealt with.

Moreover, the Corps of Engineers was deprived of the discretion which lay with the Corps of Engineers under that program. The practical effect was to bring in an amount of land nationwide consisting of 60 million acres, that figure being given by the head of the Fish and Wildlife Service in testimony before the House.

You can imagine the effect of including another 60 million acres of land which, in many cases, was high and dry or considered to be high and dry, wherein the Corps of Engineers had absolutely no discretion, where the value of property on the day before it was declared a wetland might be thousands and thousands of dollars per acre, and on the day after it was declared a wetland it would be worth zero because it could not be developed. Those kinds of situations pertained all over my State.

Not only was there the loss of property value, but many people who had done things innocently in wetland areas—whether it was forming a crawfish pond or farming or filling or dredging, or whatever—were being prosecuted criminally under a set of rules as to which they had no notice; they had no opportunity to be heard. No one had an opportunity to be heard.

What we said under our original amendment was that that 1989 manual, not adopted in accordance with the Administrative Procedures Act, could no longer be enforced. Since that time, we had meetings with the distinguished majority leader and his staff from the Environment and Public Works Committee who pointed out that there were ongoing some 5,000 permit applications nationwide. And, as the majority leader said, it was his desire also to have these rules adopted in accordance with the Administrative Procedures Act. Everyone thought we ought to have notice, and we ought to have the right to be heard, but 5,000 applications were pending under the 1989 manual.

We therefore came up with substitute language which has just been submitted, and which states that, for ongoing enforcement actions and permit applications uncompleted on the date of enactment of this provision, but which were based on the 1989 manual, the corps would provide the landowners the option to elect a new delineation based on the corps' 1987 manual, or completion of the action based on the 1989 delineation manual unless the corps were to consult with the landowner and determine that the delineation would be substantially the same under either the 1987 or 1989 manual.

In addition, the corps would be prohibited from implementing the 1990 proposal to increase the fees imposed on the public through the 404 program.

That fee increase was an increase, if I recall, from $50 to $500, to apply, which might be for only one lot.

As a practical matter, Mr. President, the Administrative Procedures Act provides for 30-days' notice so that they could comply with the law by submitting tomorrow a notice, and the 30 days provided under the Administrative Procedures Act would run and be over with well before the fiscal year.

As a practical matter, I think it would take longer than the 30 days stipulated by law. But we are not talking about a half a year or a year. We are talking about a matter of, well, it depends on how long they would want to take. But however long it is, it is a fundamental right. When you are dealing with not just hundreds of millions, but billions of dollars' worth of property value and the loss of freedom, indeed the criminal prosecution of people under a manual, somebody ought to have the right to be heard under those regulations. And that is what this amendment does. I believe it has been thoroughly discussed and gone over. So I yield the floor at this point, Mr. President.

Mr. SIMPSON. Mr. President, I want to express my full support for the amendment offered by the senior Senator from Louisiana, Senator JOHNSTON, regarding the future implementation of the 1989 Federal Delineation and Jurisdictional Wetlands Manual.

It is so unfortunate and wholly inappropriate that the Environmental Protection Agency and the Corps of Engineers have been unwilling, up to this point, to subject this manual and other important wetland memorandums and directives to the normal public comment process which is provided under the Administrative Procedures Act. Like all other major initiatives to protect our Nation's natural resources, the wetlands program is highly controversial and rarely satisfactory to a clear majority of concerned interests. That is to be expected. But it was completely unfair and very improper for these agencies to deny the American public their normal opportunity for scrutiny and comment.

The delineation manual is not simply a scientific report. It contains much

science, but it also sets policy. Even if that was not its original purpose, it cannnot be disputed that it has been a statement of policy since its publication in 1989. Major initiatives and directives have been generated from this delineation and jurisdictional manual. Significant changes in the enforcement of the wetlands program directly resulted from the publication of this manual. I also believe that the two memorandums of agreement regarding enforcement and mitigation of wetlands—which have not been subject to the normal public comment period—should certainly be. It is the public's right.

This amendment is not a congressional maneuver to delay or sidetrack protection of our Nation's wetlands. However, it is clearly Congress response to the outcry in America that this particular regulatory program is totally out of control. This manual and related regulations have critically important policy implications that substantially impact State water rights, private property rights, property taxation matters, important flood control programs, as well as waterfowl habitat management and protection initiatives, to name just a few areas. The most significant of these far-reaching agency actions since 1977, including the manual and the aforementioned memoranda, have not been subjected to public comment. That, my colleagues, is absurd, arrogant, inappropriate governing—no matter what one's opinions are of the wetlands program.

Upon inclusion of this amendment in the fiscal year 1992 energy and water appropriations bill, I do encourage the Environmental Protection Agency and the Corps of Engineers to begin the public comment progress expeditiously and to treat it with the highest regard and honesty. It is no more than what is required for any other environmental initiative, and no less than the American public surely deserves.

Mr. BAUCUS. Mr. President, I am glad that the distinguished Senator from Louisiana has agreed to modify his provision in the energy and water appropriations bill (H.R. 2427), which would have adversely affected efforts by the Army Corps of Engineers to carry out section 404 of the Clean Water Act.

That provision would have prohibited the Army Corps of Engineers from using any funds after September 30, 1991, to identify or delineate any area as a wetland subject to section 404 of the Clean Water Act by means of the current (1989) Federal Manual for Identifying and Delineating Jurisdictional Wetlands or any subsequent manual that is not adopted in accordance with the requirements for notice and public comment under the Administrative Procedures Act.

I have called on the Federal agencies to adopt a technically sound and scientifically credible wetland identification manual that has been submitted to the public for review and comment before it is put in final form.

But the provision in the reported bill also would have prohibited the Corps of Engineers from using funds to apply or enforce section 404 with respect to any activities in areas that were delineated as wetlands using the current manual. The effect of this language would have been to require redelineation of the wetland sites identified in about 5,000 permit pending permit applications. Redelineation of these areas, as well as initial delineations for future permit applications and for those people who are trying to avoid filling wetlands, would have resulted in significant delays.

The provision would have required redelineation of thousands of pending section 404 enforcement actions—administrative, civil, judicial, and criminal—pending at the Department of Justice, before the courts, or under consideration at EPA or the Corps of Engineers. The provision would have caused considerable confusion regarding the status of all of those cases, as well as for any additional cases where a discharge had occurred and a delineation had been made under the 1989 manual.

Finally, the provision would have prevented the corps from monitoring or enforcing conditions to the tens of thousands of permits issued during the past 2 years that relied on the 1989 manual.

So I am glad that the provision has been substantially modified to largely resolve these concerns by removing the retroactive portions of the provision and requiring use of the 1987 corps wetlands manual in lieu of the 1989 manual. But I remain concerned that the modification offered by the Senator from Louisiana will result in greater confusion and delay.

The principal complaint of witnesses who have testified before the Subcommittee on Environmental Protection has been that people who apply for section 404 permits to develop wetlands is that the section 404 process is unduly complicated and time-consuming. Therefore, we should be looking for ways to reduce, not increase, those problems.

It would have been preferable to allow the corps to use the 1989 manual until December 31, 1991, or the date on which a manual is adopted in final form, whichever is earlier. This change would have given the Federal agencies a chance to make a smooth transition from the 1989 manual to a revised manual, thus avoiding a situation where the corps, under the energy and water bill, would be using one set of procedures—the 1987 manual—and the EPA and other Federal agencies would be using a different set of procedures—the 1989 manual.

The PRESIDING OFFICER. Is there further discussion of the amendment? If not, the question is on agreeing to the amendment offered by the Senator from Louisiana.

The amendment (No. 570) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I want to thank the distinguished Senator from Louisiana for his courtesy in the handling of this matter. He has described the situation, and I will not repeat it now. I think it is important that all Senators and the public understand that our objective is to have adopted, in final form, a manual, following public comment and the opportunity for people around the country to express their views as to how the proceedings with respect to wetlands should occur.

The difficulty we are now in is that the administration has been unwilling to submit the manual, first propounded in 1989 and now being used to implement the procedures, for public comment. The distinguished Senator from Louisiana and the ranking Member and many others are concerned about this. We may not agree on precisely what each definition or delineation is under the manual, but we do agree that what is needed is a public comment period and, following the consideration of those comments, adoption of a manual in final form that seeks to achieve what I think is the objective shared by the overwhelming majority of Senators, and that is preservation of wetlands in a reasonable and responsible way.

In most areas of public policy, there is a huge gap between the statement of general policy and its application in a specific set of facts. But I think in this instance, what we are trying to do and what this amendment is intended to do, as I understand it, is to encourage the administration to do that.

By coincidence, Mr. President, I will inform the distinguished Senator from Louisiana, the Environment and Public Works Committee has a hearing tomorrow morning on the subject of wetlands. I intend to attend that hearing to convey to the administration witnesses, the Administrator of the EPA, perhaps others from Interior, Fish and Wildlife, my view, and I believe the view of many others, that what we need out of the administration now is to put this manual out for public comment, receive that comment, and then propound in final form a manual that we hope will achieve our common objective.

So I thank the Senator. As I have said, we have had very good discussions on it. We may not agree on every application, every definition, every delinea-

tion, but we share in common a desire to get this process moving in a way that will end the uncertainty, anxiety, and difficulty that is now existing as a consequence of the administration's actions to date in this regard.

Mr. JOHNSTON. Mr. President, I thank the majority leader for his comment. He has stated it, as usual, correctly. It is our common desire to see the manual adopted after proper consideration and comments.

I might add that we had hearings on this matter in this committee. During that, after hearing some complaints from people from my State, I invited representatives of EPA, Fish and Wildlife, and the corps to come with me to my State to hear in person the comments and see some of the wetlands involved, which they did, which I think they found to be very constructive. I, as much as anybody in this body, want to protect wetlands. As the majority leader knows, I have had various amendments to try to get money to restore our wetlands and to mitigate their loss. With some success, we have been able to do that.

But on the question of the permitting and the procedures, it is very, very important to have the public, and particularly public bodies, involved. I believe that the new manual, whenever it is adopted, ought to involve public bodies first. The way the manual operates right now—and I will not go into it in great detail—if an individual property owner, an owner of one lot in a subdivision wants to do something that requires a permit, he must show that there is no other land in his county or parish that is available for this; that his is necessary, in effect, for that. It puts a huge burden on this individual property owner. That ought to be the kind of burden that a public body shoulders, along with the Corps of Engineers, EPA, and the Fish and Wildlife Service. I hope that the new manual will go through that procedure in designating wetlands.

In any event, I am very pleased we have been able to work this out at this interim stage of the proceedings, and I thank the majority leader for his constructive leadership.

Mr. MITCHELL. I thank my colleague.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

Mr. CHAFEE. Mr. President, I would like to be heard before the amendment is adopted, if I might.

The PRESIDING OFFICER. Without objection, the Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I would just like to thank the distinguished majority leader for his help in getting some of the problems straightened out. I think the final result is not necessarily what we would all want, at least what I would want. But life is a compromise around this place. It does seem complicated, I must say that. The new manual should be out very quickly. Then the confusion arises as to which manual in the meantime they operate under.

By the way, am I correct in saying that the line "nor shall any funds be used for application or enforcement of the provisions of section 404 to activities undertaken on such lands" has been stricken?

Mr. JOHNSTON. I believe the Senator is correct.

Mr. CHAFEE. If I am correct in this, it reads as follows, starting with the first paragraph:

> None of the funds in this act shall be used to identify or delineate any land as a "water of the United States" under the Federal Manual for Identifying and Delineating Jurisdictional Wetlands that was adopted in January 1989 (1989 Manual) or any subsequent manual not adopted in accordance with the requirements for notice and public comment of the rulemaking process * * *.

Mr. JOHNSTON. If I may interrupt the Senator, the Senator is correct. We did strike the phrase "nor shall any funds be used for application or enforcement of the provisions of section 404 to activities undertaken on such lands." We did strike that and added two additional paragraphs.

Mr. CHAFEE. Again, I would like to thank the majority leader for his work in connection with this. I also feel confident when the majority leader has worked on wetlands matters, because I know of his great concern. He and I have been involved with these battles for many, many years on the same side.

I want to thank the distinguished floor manager also for the arrangement. It is a little complicated. We are going to have a hearing tomorrow in which we will urge the EPA to get out their manual as rapidly as possible. So this all may be moot; a new manual may be out by the time this legislation is enacted into law.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senator from Rhode Island. I know of his interest in wetlands. I know he recently made a trip to Louisiana and saw, among other things, Bayou Sauvage, which is a refuge I had something to do with creating. I thank him for his interest in that and wetlands in general.

Let me assure the Senator this is not meant to kill wetlands regulation at all. I think he understands that. I am certain he understands that. There need be no lengthy interregum at all—in fact, the 1987 manual as a floor will be there, so that no wetland as defined under the 1987 manual could be defiled without getting a permit from the Corps of Engineers.

I think it is fair to say that the principal difference, other than the procedures involved between the 1987 to the 1989 manual, is that under the 1987 manual the corps had discretion to go virtually as far as the 1989 manual. The 1989 manual gave no discretion to do so. It was mandatory and compulsory. So that the corps will have full authority to protect during whatever lag time there is before the new manual is adopted.

I hope that lag time is not lengthy, and I do hope it is one that recognizes the right of not only individuals but local governing bodies to be heard in this matter.

So I thank the Senator from Rhode Island for his interest.

Mr. CHAFEE. The distinguished Senator should feel very, very satisfied for Bayou Sauvage, which I think is in the neighborhood of 22,000 acres, which is a magnificent wetland that has, indeed, been saved. And all of it is in the environs of the city of New Orleans, if you can believe it. There it is. It has been saved and perhaps someday they will call it Bayou Johnston, for all we know.

Mr. JOHNSTON. We pronounce that in New Orleans, "Bayou Johnston."

Mr. MITCHELL. Will the Senator yield, because I want to make comment with respect to the remarks of the Senator from Rhode Island.

Mr. JOHNSTON. Yes, I am happy to yield.

Mr. MITCHELL. First, Mr. President, as every Member of the Senate knows, no Member of the Senate is more diligent in the protection of our environment generally, and preservation of wetlands specifically, than the Senator from Rhode Island.

I merely want to inform him that with respect to the amendment just adopted, it is a classic compromise. The Senator from Louisiana had a position that was in the bill; I suggested an alternative position; and we met and discussed it. The result is a middle ground between the two. It represents a balancing of competing concerns, both of which are valid.

The concern of the Senator from Louisiana was as to the problems that are currently arising from the implementation of the 1989 manual, the reasons he has stated, and there is no doubt that there are problems arising in that regard.

My concern, as I expressed to him, was the confusion that will result from the possibility of two changes in policy; one occurring at the beginning of the next fiscal year on October 1 when we go from implementation of the 1989 manual to an optional 1987 manual or 1989 manual, and then, hopefully, shortly thereafter to a final manual if the EPA moves and we get the period of public comment.

We discussed that in an open and candid way, and the result is a middle ground. I think both points of view are valid. As often happens, we are weighing competing concerns.

I want to assure the Senator from Rhode Island that I would have pre-

ferred a longer period of time to avoid the possibility of two changes in course of action in a relatively short period of time. The Senator from Louisiana would have preferred the original language in the bill. The result is, I think, a reasonable compromise, and it is a subject that I do look forward to working on with the Senator from Rhode Island.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, the reported committee amendment on page 51, lines 10 through 16, is an amendment that would strike House language and insert additional language to clarify the matter of payments and credits by utilities into the nuclear waste fund as a result of a court decision concerning overcharges and overpayments into the fund.

This amendment has raised issues concerning scorekeeping of future payments due the fund as well as credits for future payments. After further discussion with OMB, we have decided to leave the language as it was originally submitted when the budget was transmitted to Congress in January and, therefore, the committee-reported amendment is no longer necessary. This has been cleared on the Republican side and, inasmuch as it is no longer necessary, I move to table the proposed committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. JOHNSTON. I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 571

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 571:

On page 57 line 14 strike $403,600,000 and insert: "$567,600,000."

Mr. JOHNSTON. Mr. President, this is a technical amendment to correct an error in the bill. Due to the short time period the subcommittee had in putting the bill together, program direction funds amounting to $164,000,000 was inadvertently left out of the appropriation for other defense programs on page 57. This amendment merely conforms the bill to the total amount recommended by the committee.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 571) was agreed to.

Mr. JOHNSTON. I move to reconsider the vote.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I yield the floor.

Mr. DOMENICI. Mr. President, I know Senator GLENN has an amendment, and it will take just a moment. I am on the subcommittee, and I just wanted to make a couple of comments regarding the overall bill.

Obviously, Mr. President, this is very important to those of us who have national laboratories and defense nuclear activities within our States, and that happens to be the case as far as New Mexico is concerned.

Mr. President, I rise in support of the energy and water development appropriations bill reported by the Senate Appropriations Committee.

By CBO's scoring, this bill provides $22 billion in new budget authority and $13.1 billion in new outlays for the Department of Energy, the Corps of Engineers, the Bureau of Reclamation, and for other selected independent agencies. By CBO's scoring the bill is within its section 602(b) allocation.

I want to thank the distinguished chairman and ranking member for including additional funding for the Department of Energy's defense activities. This funding will help address what has been a steady erosion in funding for the core research, development and testing programs at DOE.

I also note that this action would not have been possible without the assistance and cooperation of the distinguished chairman of the full committee, Senator BYRD, and Senators INOUYE, and STEVENS.

I particularly appreciate the subcommittee's support for a number of projects and programs important to my home State of New Mexico.

One of these programs is $50 million in funding to carry out the National Competitiveness Technology Transfer Act of 1989, which I coauthored.

This legislation will encourage the integration of the scientific and technical expertise of DOE's national laboratories with U.S. industry to enhance their capabilities and their ability to compete in an expanding global market.

I commend the subcommittee chairman, the Senator from Louisiana, and Senator HATFIELD, the ranking member, for producing the first Senate appropriations bill for fiscal year 1992, a bill that falls within the subcommittee's 602(b) allocation and meets the caps of the budget summit agreement and CBO's estimates.

AMENDMENT NO. 572

(Purpose: To transfer funds for atomic energy defense activities from research, development and testing, and production and surveillance, to environmental restoration and waste management)

Mr. GLENN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio, [Mr. GLENN], proposes an amendment numbered 572.

Mr. GLENN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 54, line 2, strike "$1,976,650,000" and insert "$1,941,650,000".

On page 54, line 13, strike "$2,590,478,000" and insert "$2,507,478,000".

On page 56, line 14, strike "$3,640,372,000" and insert "$3,758,372,000".

Mr. GLENN. Mr. President, the purpose of this amendment is to restore $118 million to the Department of Energy's budget for its Office of Environmental Restoration and Waste Management. The amendment would also require a commensurate offset reduction in DOE's weapons activities program.

Unfortunately, the current bill requires a general reduction in the DOE cleanup program of $108.5 million. My amendment would put the DOE cleanup program at the spending level the House Armed Services Committee approved.

As a member of the Armed Services Committee with three DOE facilities in my home State of Ohio, and as chairman of the Governmental Affairs Committee, I have maintained a very special interest in DOE's nuclear weapons program for a long time. We have been working on this for about 7 years as Members of this body, and I have risen on this floor repeatedly to address this particular problem of waste management and cleanup.

Mr. President, it took many years of hearings, numerous reviews by the General Accounting Office, the National Academy of Sciences, and other independent groups to convince the Department of Energy that it had a very serious environmental safety and health problem.

In light of these problems our national policies regarding the production of nuclear weapons have undergone a remarkable transformation in the last few years. The buildup of the nuclear arsenal so aggressively promoted by the Department of Energy throughout the 1980's ultimately became a major factor in the incipient collapse of the department's nuclear industrial infrastructure.

This happened mainly because the very same elements that led to the successful development of the first nuclear weapons—isolation, secrecy, decentralized management, self-regulation, extensive contractor dependence—have left us with numerous deteriorating facilities, and enormous accumulations of dangerous waste products and profound contamination in the environment.

Mr. President, we all remember back in those days of the sixties, the fifties, when the watchword, the cry was in the weapons community "The Russians are coming. The Russians are coming." We had to get ready. So production was the watchword, production of fissile materials, production of materials for nuclear weapons.

Mr. JOHNSTON. Mr. President, I wonder if the Senator would yield to discuss a unanimous-consent request?

Mr. GLENN. Yes.

Mr. JOHNSTON. The majority leader had stated that the Senator from Ohio either wanted or was willing to have an hour equally divided on this amendment. If the Senator from New Mexico and the Senator from Oregon are willing, that would suit me, to have an hour equally divided.

Mr. DOMENICI. Briefly reserving the right to object, could I just discuss a matter with the Senator from Ohio for a moment before we agree?

I discussed this matter with the Senator generally before the amendment was offered. Since then, I have had a chance to look at it, and I had an indication from the Senator from Ohio that he did not intend to reduce its RD&T at the nuclear laboratories in his amendment. I am not choosing pieces but I just wanted to inform the Senator that he has reduced it by $35 million in this amendment; that is, the basic RD&T which is in this bill. That is not what I am concluding he intended to do.

Mr. GLENN. We have that function. If our figures are correct, I believe it is still some $230 million above the request by DOE. That is out of the function that encompasses weapons research development and testing.

If that comes out of labs, I was not aware that this was specifically oriented to the labs. If it is, well, it is still close to $230 million over what DOE requested.

Mr. DOMENICI. The Senator may be correct. But I understood that he did not want to take it out. I wanted to inform him that he had.

Mr. GLENN. I generally have said I have been supportive of the labs, and I have. I think I have supported the requests for increased money for the labs. I do not think they should be going downhill at all.

I am very much concerned about the environmental safety and health situation that we have created over the past 45 years or so. I just do not like to see money being reduced for that function. That is basically what this is all about.

Mr. DOMENICI. I do not know, without talking further with the chairman, whether I am prepared to agree to an hour because frankly the money that is in this account that I am referring to was actually transferred from defense to this account. Now we are going to reduce it. It would not even have been there but for the fact it came out of defense to go into this account, and now we are going to put it somewhere else. That is really not what it was intended for.

Perhaps a minute's discussion with the chairman might permit the Senator from New Mexico to agree.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, if it is agreeable with the distinguished Senator from Ohio, I will now ask unanimous consent that there be 1 hour for debate on this amendment equally divided between the distinguished Senator from Ohio, Mr. GLENN, and myself. Does anyone desire to amend that?

Mr. GLENN. If I have a half hour, that is fine. Now equally divided?

Mr. JOHNSTON. Provided that no second-degree amendment be in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. Who yields time?

Mr. GLENN. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GLENN. Mr. President, I indicated some of the problems that had developed, and I indicated back in those days, fifties, sixties, the cry was "The Russians are coming," and we have to produce nuclear materials for weapons. What do we do with the radioactive waste? Do not worry about those. We will put them out in a pit. We will store them some place. Worry about them later.

Now is later—starting about 7 years ago when we first began trying to address this program of environment safety and health and radioactivity.

Mr. President, now we find ourselves looking at an entirely different dilemma. Instead of facing the risk of not having enough nuclear weapons we face growing risks to our health, the environment, and the economy, from the legacy of the nuclear arms buildup of the past 50 years.

Moreover, with an acceleration of unilateral nuclear weapons retirements and continuing nuclear arms control we find ourselves ironically facing a new set of problems stemming from not having the basic industrial capability to safely manage the large amounts of surplus nuclear and hazardous materials coming back to the United States.

Given these circumstances, the problems of allocating shrinking resources between production and cleanup have never been greater. Nonetheless, the basic fact remains that waste management and environmental restoration has become one of the most important tasks that the DOE must address to assure the viability of the DOE nuclear weapons complex.

Thus, Mr. President, I am indeed disappointed to see that the energy and appropriations bill contains a general reduction of $108.5 million in DOE's environmental restoration of waste management budget compared to the House, and $65 million below the department's budget request, and an increase above the House allowance of $308 milion for DOE's weapons programs.

Mr. President, that is $250 million above DOE's budget request for weapons programs. I respectfully believe that this ratio of spending which favors production over cleanup once again does not reflect the changing priorities of the department. Indeed, it starts us back onto that same track of emphasis on production over safety and health that got us into this mess over the last 45 to 50 years.

Over the past few years, the DOE has, for the first time, been trying very hard to address the daunting health and environmental legacies of the nuclear arms race. Quite simply, since World War II, the DOE has used the environment of the sites they occupy as disposal media for massive amounts of radioactive and toxic wastes. Not surprisingly, the contamination that has been created is among the most severe in the world. At the Hanford Nuclear Reservation in Washington State some 400 billion gallons of hazardous and radioactive liquids have been dumped into the soil—enough to create a lake the size of Manhattan 80 feet deep. In particular, large amounts of high-level nuclear wastes were dumped there during the 1940's and 1950's into unlined burial trenches. Now there is concern by the Environmental Protection Agency that the soil beneath these trenches may be as radioactive as the contents of some of Hanford's high-level waste tanks. It is not known with any certainty how fast these contaminants are traveling.

The risks from DOE's radioactive wastes are not just limited to past dumping but also involve the potential for explosions in existing waste tanks at the Hanford and Savannah River sites. These problems were underscored last year at hearings regarding accident and explosion hazards at DOE high-level waste sites before the Governmental Affairs Committee. Unlike

DOE's reactors, the high-level waste tanks at Hanford and Savannah River cannot be shut down if a danger exists. And unlike DOE's reactors, until recently, the Department has virtually ignored waste accident problems.

Moreover, the technologies to stabilize and clean up these sites, in some cases, do not exist. The DOE has characterized less than a third of the contamination created. We know even less about the health impacts production may have had on the thousands of Americans who live near and work at DOE sites.

However, since Secretary Watkins took charge of the agency, he has taken steps to put the DOE cleanup program on a more sound operational basis. For instance: DOE has consolidated its cleanup efforts under a new Office of Environmental Restoration and Waste Management. Five-year cleanup budgets have been developed. Efforts are underway to reform DOE's open-ended contract system. The Department is attempting in good faith to comply with environmental laws; and major emphasis is being placed on research and development of waste management and cleanup technologies. That is all to the good.

Unfortunately, the spending cut embodied in the energy and water appropriations bill will set these efforts back. Specifically, the $108.5 million cut will delay cleanup actions at DOE sites across the country, making it necessary for DOE to renegotiate compliance agreement milestones—thus, leading to an eve more costly cleanup in the future. The number of compliance agreements reached with EPA and the States to better manage hazardous wastes and to clean up DOE sites will have grown from 59 in the fall of 1990 to 86 by the fall of this year.

This means that compliance agreements in California, Washington, Idaho, Nevada, Illinois, Ohio, Missouri, Texas, South Carolina, Florida, Tennessee, Kentucky, New York, Pennsylvania, and so forth, will be impacted.

The energy and water bill automatically puts the DOE in a poor bargaining position with regulators because spending levels favor weapons over health and environmental protection. Here we go down that slippery slope once again. The energy and water bill automatically puts DOE in that sort of a poor bargaining position.

Waste minimization, a key aspect of DOE's cleanup technology R&D program will be set back. Also, there is a distinct possibility that the restart of DOE's production facilities could be jeopardized after 90 days of operation by this cut because of not having adequate funding to meet Resource Conservation Recovery Act driven storage requirements. For example, the restart of the F and H reprocessing plants at the Savannah River Plant could be crippled because of the lack of adequate storage and treatment capacity required under the Resource Conservation and Recovery Act.

Increasing the budget for DOE's nuclear weapons program at the expense of the cleanup of DOE sites, would undermine public confidence in Secretary Watkin's efforts to restore the agency's badly damaged credibility.

Also, the $308 million increase in weapons spending, provided for in the energy and water bill, comes at a time when our nuclear arsenal requirements are shrinking. In February of this year, the Governmental Affairs Committee, which I chair, held an oversight hearing on the Department's proposed reconfiguration study for the nuclear weapons complex.

The study calls for a significant downsizing of the DOE's nuclear weapons research and development and production capability. It also suggests that additional plutonium production is not needed. In fact, at the hearing DOE indicated that the amount of surplus missile materials from retired warheads, which will have to be managed, could become quite large.

Perhaps one of the most striking facts that came out of that hearing was the degree to which the U.S. military is unilaterally retiring nuclear weapons outside of arms control agreements. DOE witnesses clearly indicated that the rate of unilateral warhead retirements not linked to arms control are and will be significantly greater that retirements linked to arms control, including the upcoming START agreement.

While I understand the need to fund the DOE's deteriorating nuclear weapons infrastructure—and I have supported that—I am also concerned that we not do this without taking into account the rather significant reduction in our nuclear arsenal requirements. Therefore, I want to make it clear that my amendment in no way is meant to take funding away from programs to assure the safe retirement of nuclear weapons and those programs designed to upgrade environmental, safety, and health activities associated with DOE's production and surveillance activities.

We should also not ignore the financial mismanagement problems of the weapons complex.

We now know, based on the work of the DOE inspector general that tens of millions of dollars have been mispent at DOE weapons sites. Large sums of money have been spent for projects which the Congress had not authorized. DOE contractors at weapons facilities and weapons laboratories were found to be engaging in spending practices that led to excessive and unecessary expenses for the Department. Competition has been found by the DOE inspector general to be an alien concept for DOE weapons contractors, who are wasting million of dollars that could have been saved by competitive procurement. Until recently, at the Savannah River Plant, the criminal theft of Federal money would have been considered to be an allowable cost because of inadequate contract standards.

Although the DOE cleanup program, from the very beginning was able to generate annual 5-year spending plans, DOE's defense program is over a year late in submitting its first 5-year spending plan, even though it was mandated by law in 1989.

Increasing the rate of spending for DOE's nuclear weapons program, at the expense of the cleanup of DOE sites, sends the wrong signal to the agency and to the American public.

It indicates that the Congress is willing to ignore the rather disturbing lack of control DOE has over its weapons contractors and also implies that the Congress is willing to reward this program, despite the continued misuse of funds.

Mr. President, protecting the health and environment of Americans, cleaning up the severe contamination at DOE sites, and restoring credibility to the Federal nuclear program should not be shortchanged. We spent years getting an adequate amount into this environmental safety and health budget, and I respectfully urge my colleagues to support my amendment to restore that funding, to increase funding for DOE's cleanup program, and require commensurate offset reductions in DOE's weapons program for all the reasons I have enumerated above. I believe this is the least we can do to ease the tremendous environmental burden we will leave our children as a result of the nuclear arms race.

Mr. President, just in summary I would say that what this amendment does itself is strike money from two places in the bill. It strikes money and adds money then in a third place.

The first place it strikes is out of the weapons research development and testing program. It only takes $35 million out of that program, which is already approximately $230 million above what was requested by DOE. The second place it cuts is weapons production and surveillance. It cuts $83 million, and that reduces DOE's request by $41 million. Add those together and it comes out to the $118 million added back to the environmental restoration and waste management account.

Mr. President, that equals the amount the House has already authorized in their legislation and I think is the least we can do after fighting for so many years for environmental cleanup funds so we can start the cleanup that has been neglected for so many decades.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Ohio has 16½ minutes remaining. The Senator

from Louisiana controls his remaining time.

Mr. JOHNSTON. Mr. President, I yield myself 5 minutes.

No one in this body is more concerned about environmental restoration and waste management than I. Well, perhaps the Senator from Colorado who has Rocky Flats is. I know about his deep concern.

At least let me say, Mr. President, it is a great concern with me. A few years ago I sponsored an amendment to have a research institute for defense cleanup. It is a huge problem in this country.

Mr. President, the fact that it is a huge problem does not mean that it is easily solvable or that indeed applying money to the program automatically results in cleanup.

If I may tell my colleagues what we have done in this account, in 1988, we had $881 million, in the environmental management account. By 1989 it was $1.73 billion. By 1990 it was $2.393 billion. By 1991 it was $3.455 billion and in this budget it is $3.6 billion.

Mr. President, it has gone from $880 million in 1988 to $3.7 billion requested for fiscal year 1992, more than four times the 1988 level.

The $3.640 billion recommendation in this bill is a 52-percent increase over the 1990 program and a 17-percent increase over the 1991 program. This is before adding the $340 million provided in the dire emergency supplemental bill.

Furthermore, Mr. President, it is unlikely that the money in that 1991 supplemental will be spent this year. Frankly, they do not know how to spend it. As of May 31, 1991, the unobligated balances in the environmental restoration and waste management program, this program, were $421 million and the uncosted balances—that is work not performed—amounted to $1.327 billion. This is the equivalent of a full half year's funding.

The amount recommended for environmental restoration and waste management is $595 million over the amount included in the 1991 energy and water appropriation bill. So, Mr. President, we have more money in this account than they know how to spend.

Mr. President, the assistant secretary in this matter is Leo Duffy, a man for whom we have high regard. When he testified recently before this committee, we discussed with him the huge problem he has in identifying these problems and determining how to clean them up, in managing a program that is growing by leaps and bounds; four times over this program has gone since 1988, four times over.

Now just the sheer physical job of managing that much money—I mean you do not spread dollar bills out on the ground and they do not automatically absorb nuclear waste. You have to figure out what the problem is, how to clean it up, get a contractor, oversee the contractor. Just to pump more money in does not help. So, Mr. President, we think a 400-percent increase since 1988 is enough.

On the question of whether we have raided this account in order to help the nuclear weapons account or in order to help any other account, the answer is definitely no.

The amount identified here, the $108.9 million, is an account that we call savings and slippage. That is a line item that is included in all of our accounts.

For example, the Corps of Engineers has a savings and slippage of $151 million in this bill. It means that work that they want to do and are able to do is delayed because of permit delays, because of weather delays, because of a whole series of things.

Just as I pointed out that they have $421 million in uncosted balances that is work not performed, there have been delays in the program. There always are.

Last year the administration requested and we budgeted some $142 million in so-called savings and slippage. So the $108 million which is less than last year for savings and slippage is not raiding the program. To the contrary, it is a lesser amount of transfer for the ordinary expected delays and problems along the way—permitting problems—for example, than we usually have. We did not take the $108 million out of this program in order to help anything else.

The $200 million which was put into the weapons labs, the distinguished Senator from New Mexico will speak about this in greater detail. But essentially, after we had made this $108 million—an additional 2 minutes Mr. President—after we had made this account for $108 million in savings and slippage, then the Senator from New Mexico and I went to the distinguished members of the Defense Appropriations Committee and asked for a transfer of $200 million from their account, which is the 050 account, to our account which is the 053 account.

The PRESIDING OFFICER. The time has expired.

Mr. JOHNSTON. Mr. President, I request an additional 2 minutes.

In addition to the 053 account which is for the weapons labs, it was a transfer from defense appropriations and those functions to defense emergency matters which is the national labs. That was the transfer. It was not a transfer out of cleanup for a noncleanup measure.

So, Mr. President, we really believe we are confident—in fact we are overconfident—that we have more money here than we can sensibly spend. I mean we provide it last year because it is a full half year's funding that it unspent.

Leo Duffy has an incredible problem in managing this account. We spoke about this in great detail.

The DOE inspector general has identified the environmental restoration and waste management program as the No. 1 area in DOE for potential fraud and abuse. Leo Duffy testified to that. Why is that? Because it is such a huge program with so many dollars.

Mr. President, if we had an extra $10 billion and we put it in this program this year it would not do any good. We do not know how to spend it. We have not been able to spend that which we already have. I wish we knew how. But we have enough money and the $108 million transfer for savings and slippage, believe me, is not robbing waste cleanup in order to do something else.

It is an ordinary accounting transfer problem, recognizing the realities of delay and the problems along the way.

Mr. DOMENICI. Mr. President, will the Senator yield me 5 minutes?

Mr. JOHNSTON. I yield 5 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I might say to the Senator from Ohio, you will note the overall amount of money in this bill for defense, that is DOE defense, is $200 million more than the President's budget request and $200 million more than the House bill. Now, that is really what happened. So the Senator will know—when we had the Secretary of Energy before the Appropriations Subcommittee, we asked him about the DOE defense budget for the National Laboratories and how much it was shortchanged when the budget was put to bed. I said to him, "About $200 million?" And the response was "About $200 million."

Now, I say to the Senator from Ohio, what we did is exactly what Senator JOHNSTON has indicated. We went over to the full Appropriations Committee and we said, "You should give us $200 million from defense, from function 050, the total for defense. Let us put it in an account so we will not shortchange DOE defense research activities."

The committee agreed. The Senator's amendment assumes that when we put that money in DOE for the three deterrent laboratories, after we had funded the other ones, we put the entire $200 million there. Obviously, we raised the level that the President asked for because the Secretary had already told us when they put the budget to bed, he shortchanged his own department by $200 million.

I really do not think, when environmental cleanup is going up in 4 years by over 300 percent, that is the account you want to add some more to. It has gone up more than 300 percent. I do not think the Senate really wants to remove money from nuclear research at the deterrent laboratories. In fact, I have a letter dated July 9 from the three lab directors. The letter is to Senator BENNETT JOHNSTON and Senator MARK HATFIELD. It clearly says that these laboratories are in a down-

hill slide; that their capability is greatly diminished from 5 or 6 years ago, and their workload, which the Senator from Ohio is very familiar with, is not going down because the Soviets are not reducing their nuclear capability. We are engaged day by day in all kinds of new arrangements, surveillance, and they have more work to do rather than less.

I ask unanimous consent that the letter to the two Senators be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

LOS ALAMOS NATIONAL LABORATORY
OF THE UNIVERSITY OF CALIFORNIA,
Los Alamos, NM, July 9, 1991.

Mr. J. BENNETT JOHNSTON,
Chairman, Senate Energy and National Resources Committee, Senate Hart Office Building, Washington, DC.
Mr. MARK HATFIELD,
Ranking Minority Member, Subcommittee on Energy and Water Development, Senate Hart Office Building, Washington, DC.

DEAR SENATORS JOHNSTON AND HATFIELD: An Op-Ed article by Mr. Leslie Gelb published in the New York Times on June 26, 1991 touched on the issue of funding of the Department of Energy nuclear weapons laboratories. His assertion that billions are being squandered in "full employment programs" along with allegations of "eating up a fortune in overhead" are grossly in error. Contrary to his allegation, we are deeply concerned about maintaining the technical competence for the nuclear weapons program as we reported to Senator Exon's Subcommittee on May 9, 1991. We want to reiterate some of our concerns in response to Mr. Gelb's article.

The current nuclear weapons research, development, and testing (RD&T) budget at the three nuclear weapons laboratories and the Nevada Test Site totals $1.7 billion, but the budget cuts of the past few years are placing nuclear competence at risk. The laboratories have lost nearly one-third of the skilled professionals working on nuclear weapons RD&T over the past five years. The RD&T share of the Energy Department's defense activities has dropped from 35 percent in 1978 to 16 percent today. Contrary to Mr. Gelb's assertion, the Department and key congressional committees are keenly aware of these budgetary shortfalls. Several departmental studies are addressing the concerns about nuclear weapons RD&T funding and nuclear competence.

The United States continues to rely on nuclear deterrence as a cornerstone of its national security. Nuclear deterrence has been successful for over 40 years because national leaders believe beyond a reasonable doubt that the nuclear forces, if called upon, are deliverable, survivable, and would function as intended. This belief does not rest on technical knowledge on the part of the leaders, but rather on assurances provided to those leaders by scientists and engineers in whom the leaders must have complete confidence.

Nuclear competence and, therefore, the credibility of the U.S. nuclear deterrent rest indispensably upon the credibility of the three nuclear weapons laboratories. The cold war thaw will allow deterrence with significantly reduced nuclear arsenals, but once we lose nuclear competence we undermine the credibility of the deterrent.

We are well aware that the role of nuclear weapons is changing as a new world order emerges. In fact, our priorities have already changed markedly, although our responsibilities have not diminished. For example, confidence in the safety of nuclear weapons continues to be of utmost importance. Safety today is measured against higher standards than ever before. Safety has always been built into the design and into handling and operating procedures. However, a recent congressional panel chaired by Professor Sidney Drell of Stanford University concluded that in tomorrow's stockpile more of the safety features in nuclear weapons must be built into the weapons themselves rather than depend as much on operational safeguards. Such safety features should be emphasized even if they result in less than optimal military characteristics.

The Drell panel challenged the laboratories to "launch a competitive priority effort . . . for new warhead designs that are as safe as physically possible against unintentional, accidental, or unauthorized detonation leading to a nuclear yield or the dispersal of plutonium." This challenge tops our priorities today as the nation carefully builds down its nuclear arsenal.

Building down the arsenals is important because arms control must not only "feel good", but it should reduce the risk of war and increase our nation's security. The fewer weapons that remain, the more important it becomes that we have confidence in those remaining. This confidence is based on the professional RD&T skills residing at the three laboratories.

The skills are also critical in assessing the nuclear proliferation threat as well as being able to respond to potential emergencies and terrorist threats.

Reconfiguring the nuclear weapons complex for the smaller arsenal of the future and cleaning up a legacy of nearly five decades of production will be enormously expensive. The weapons laboratories will be key elements in designing the smaller, safer, and more affordable nuclear weapons complex of the future.

Leo Duffy, the Energy Department's cleanup czar, has emphasized the need for new technologies to clean up better, safer, cheaper, and faster. We support his program. Avoiding future cleanup problems by preventing them at the source rather than at the "tailpipe" requires competence in all aspects of nuclear weapons design and development. Investing RD&T resources in such activities today will pay for itself many times over in the future.

Finally, the laboratories have been a key factor in keeping the nation at the forefront of defense technologies to meet the threat of a host of emerging and potential adversaries. The world does not appear to be at the "end of history," nor at the end of hostilities. Technological superiority will remain important as we face an uncertain future. We must remember that the world can change rapidly. The atomic bomb was developed because of a German threat, yet it was used to end the war with Japan, and in short order to deter the Soviets.

Has technology declined in importance so that democracies need no longer worry about military implications of new scientific breakthroughs? We think not! Whereas today the nation can afford to have fewer nuclear weapons, it cannot afford to be less smart.

Sincerely,

JOHN H. NUCHOLLS,
Director, Lawrence Livermore National Laboratory.
SIEGFRIED S. HECKER,
Director, Los Alamos National Laboratory.
ALBERT NARATH,
President, Sandia National Laboratories.

Mr. DOMENICI. Mr. President, I think it should be clear to everyone that the distinguished Senator from Louisiana and Senator HATFIELD from Oregon truly want to put as much in the environmental cleanup account as we can spend in a fiscal year. I believe they have truly done that. And they have also, at the same time, taken care of truly needed programs within the production and surveillance accounts.

And, as the distinguished chairman has said, the accounts for the research, development, and testing activities carried out by the National Laboratories has gone up because the money was received from the Department of Defense and put in this account for that purpose.

Obviously, if tonight the Senate is going to take money away from the research account, which would not have been there had we not allocated it to this account, obviously we would be better off leaving it to the Department of Defense to spend, rather than transferring it and using it for purposes that were not intended.

So I urge the Senate to turn this amendment down. I think the committee has done an excellent job in disbursing the money. I agree with the chairman; there will be more money in this cleanup account. A month before the fiscal year is over, they will still have $400 million remaining to be spent. I do not think we ought to keep doing that when other accounts do not have enough to do their jobs right.

I ask unanimous consent that a detailed statement of some of the activities that were deleted from the National Laboratories in the President's budget request be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ACTIVITIES DELETED FROM NATIONAL LABS FISCAL YEAR 1992 PRESIDENT'S BUDGET FOR DOE

	Millions
Stockpile maintenance: Includes safety assessments, component redevelopments, stockpile improvement projects	21.1
Weapon effects testing and diagnostics: Includes aboveground test development to reduce dependence on underground test	10.5
ICF: Includes timely demonstration of beam focusing and capsule implosion to meet NAS milestones	5.0
New weapon systems work: Includes testing and safety assessment, development, flight/ground/interface tests	26.0
Test equipment and flight instrumentation	6.7
Weapon use control development	9.5
Materials and process development: Includes environmentally acceptable materials and processes, accelerated aging, and characterization	14.8

	Millions
Weapon system engineering and integration: Includes Focal Point test bed, independent surety evaluations	52.4
Computation and modeling: Includes validation of codes for accident likelihood and consequence analysis	8.4

Minimizing the waste associated with the production of nuclear weapons through: The development of precision casting techniques for special nuclear weapons materials, $2 million; the development of alternative weapon case material, $3 million; minimization of reliance on toxic materials in new weapon designs, $3 million.

Existing nuclear weapon designs, and their associated fabrication and machining techniques, produce large amounts of hazardous materials. This investment will assure that hazardous byproducts are minimized in the future.

This investment will assist our safety concerns by developing safer weapons through: Acceleration of the development of Insensitive High Explosives (IHE) and Fire Resistant Pits (FRP) for existing warheads, $16 million; development of "supersafe" concepts for future weapons systems, $8 million; acceleration of computer simulation concepts for design and evaluation of nuclear weapon safety features, $5 million.

The IHE and FRP features would serve to prevent or minimize the release of contaminating radioactive material in accidents involving nuclear weapons. Innovative "supersafe" concepts should lead to even safer weapons in the future. Finally, more effective simulation techniques will help to minimize our need to test weapons to effectively evaluate their performance.

Mr. DOMENICI. Mr. President, I support the Energy and Water Development appropriations bill of fiscal year 1992 as reported by the Senate Appropriations Committee.

The bill now before the Senate includes a total of $11.97 billion in budget authority for the Department of Energy Atomic Energy Defense Activities. This recommendation is $200 million above the House bill and the President's fiscal year 1992 budget request.

The increased funding is included in the bill at my request, and with the concurrence of the distinguished chairman of the Appropriations Committee, Senator BYRD, the ranking member, Senator HATFIELD, and of the distinguished chairman and ranking member of the Defense Appropriations Subcommittee, Senators INOUYE and STEVENS.

The Senate Appropriations Committee has approved a reallocation of function 050, defense, funding from the Defense Appropriations Subcommittee to the Energy and Water Development Subcommittee for subfunction 053, atomic energy defense activities. This reallocation is fully consistent with the spending caps agreed to in the bipartisan budget agreement, and I thank my distinguished colleagues for their support of this important initiative.

These funds are critically needed to reverse a disturbing erosion of the core weapons research, development, and testing [RD&T] programs at the Department of Energy's [DOE's] three nuclear deterrent national laboratories.

Staffing levels are approaching the lowest levels in years, and the budget request falls $42.6 million short of even keeping pace with inflation. Adoption of the budget request would eliminate any initiatives to improve the safety of the nation's nuclear deterrent capability.

These declining budgets come at a time when these labs are being asked to perform at increasingly technical levels in the areas of environmental compliance, environmental cleanup, and the reconfiguration of the weapons complex.

With continued progress toward the signing of the START Treaty this summer, these laboratories are also tasked with significant activities related to arms control and verification.

The House Armed Services Committee recently published the recommendations of the Drell Panel on Nuclear Safety, which place a renewed priority on the safety of existing nuclear weapons.

A significant portion of these funds will be used to develop and accelerate warhead safety and security enhancements to better maintain the nuclear stockpile.

These funds will accelerate work on supersafe nuclear designs and on environmentally improved materials and processes used in nuclear weapons production.

A portion of these funds will be used to move forward with the timely demonstration of the inertial confinement fusion technology to meet National Academy of Sciences milestones.

Some of these funds will be devoted to improved testing, again necessary to ensure the safety of the nuclear stockpile.

In sum, the additional $200 million in defense funding would be allocated in the following manner: $150 million to weapons R&D, operations; $20 million to weapons R&D, capital equipment; $17.7 million to weapons testing; and $12.3 million to the Inertial Confinement Fusion Program.

In short, Mr. President, these funds are necessary if the DOE labs are to fulfill their mission of responsibility, ensure the nuclear deterrent capabilities of the Nation, and to maintain the nuclear stockpile in a safe and secure manner.

I urge the adoption of the Senate bill.

Mr. President, if I have any remaining time on my 5 minutes, I yield it back.

The PRESIDING OFFICER. The Senator from Ohio is in control of 16½ minutes.

Mr. GLENN. Mr. President, I yield 5 minutes to the distinguished Senator from Colorado.

Mr. WIRTH. I thank the distinguished Senator from Ohio for yielding and for raising this very important amendment. I appreciate the support that the distinguished chairman of the subcommittee and the distinguished Senator from New Mexico provide to the National Labs, and I have myself long been a supporter of the National Labs.

But as the All-Star Game is on right now, Mr. President, and as I would bet that 90 percent of our colleagues and 95 percent of the country are watching the All-Star Game and not watching this debate, they are missing what is essentially a very simple choice that we have in looking ahead at where the country is going, and what kind of problems we are facing.

The choice is whether we want to spend a great deal more building more nuclear weapons when the cold war is over, or do we, as DOE itself has said, want to put a greater priority on cleaning up? Do we want to build more nuclear weapons—For what? Or do we want to clean up and start on a task that we know is getting greater and greater.

I think, obviously, we should support the amendment offered by the Senator from Ohio and myself. I believe that we ought to put that money to work right here at home to clean up for our children and grandchildren the phenomenal waste mess that the DOE has created.

The argument is made that we cannot use this money effectively. The States of this country—the Senator from Ohio knows this—the States have already signed 62 compliance agreements with the Department of Energy—62—and another 25 agreements are in negotiation right now. These are agreements that we are just beginning to get going. And yet the statement is made that we cannot use the money.

Then the argument is made: Well, you cannot spend all this money this year. Then why in the world, Mr. President, did the Department of Energy's Environmental Restoration and Waste Management Office request $900 million more for cleanup funding: This is the Department of Energy, not the Environmental Protection Administration. This is the Department of Energy, requesting $900 million more for cleanup than was agreed to by OMB.

The Department's request went to OMB, went to Sununu and Darman and Co., and they turned it down. When that money got turned down, the Department of Energy appealed: They can use the money. They not only requested it, they then turned around and appealed.

And they said the following: They said if they did not have the money to fulfill their commitment, they would lose their bargaining position with all the regulators. The Department of Energy said they would be personally libel, officials down there, if the Department failed to request adequate

funding to carry out the agreement. They said the public would lose confidence in the Department of Energy's effort to protect the health and safety of citizens and workers, and they said if this money was not granted, they certainly could not meet their 30-year cleanup goal to try to clean this up over 30 years.

Cannot use the money? Wait a minute. The Department itself requested a great deal more, and appealed it when the White House turned down their request. So to suggest, Mr. President, that the money cannot be effectively spent defies what was asked for by the Department initially.

Now, the $118 million goes into acounts that are already above the administration's request. The research, development, and testing account is already $178 million above the administration's request. We are already spending more than the administration itself asked us to spend on research, development, and testing of nuclear weapons.

The administration does not want to spend all this money on nuclear weapons. It is $165 million above the House appropriations level, and $22 million above the House Armed Services Committee authorized level.

Even if we want to go ahead and do a whole lot of development, testing, and research on new nuclear weapons, even if we want to do that, let us at least just stick with what the administration requested. This goes far above what even this administration requested.

The issue is very simple, Mr. President. It is a very, very simple issue. Do you want to spend even more money than requested by the administration for research, development, and testing of new nuclear weapons? Do you want to spend $118 million more, way above what even the administration requested? Or do you want to move towards what the administration requested to clean up? That is the choice we have now on the Glenn-Exon-Wirth amendment.

The PRESIDING OFFICER. The Senator from Ohio controls 11 minutes. The Senator from Louisiana controls 17½ minutes.

Mr. GLENN. Mr. President, let me respond in brief to the comments of the distinguished Senator from Louisiana and the distinguished Senator from New Mexico.

The distinguished Senator from New Mexico got his $200 million in there, and I agree with that and that is fine. But what we found is that the account is $230 million above the request by DOE, and that is the reason we only pulled $35 million out of that account. So we left about $195 million out of what the Senator from New Mexico says he was able to get into that account to benefit the laboratories. So I do not see that we have disturbed this arrangement that he had.

As far as the comments by the distinguished floor manager for the committee, in this cleanup account we are going to need somewhere upwards of $100 billion over a 20-year period. It has been estimated to be somewhere between $100 and probably $125 or $130 billion, which means we are going to average over that period something on the order of $5 to $8 billion, for that whole 20-year period to effect a cleanup. And the Senator from Louisiana is absolutely correct, you cannot throw money at it and make it go away. But you also cannot subtract money from it and make it happen either, I will tell you that.

What we have seen happen is we have been on a steady buildup of cleanup funds that we got started about 4 years ago after much effort. And now, for the very first time, we are talking about cutting those funds, reducing them for the very first time. And that is the wrong signal to send.

Reference was made to the savings and slippage account, but that is not in the DOE request, as I understand it. The Senator from Colorado has already mentioned the $900 million that was originally requested for EM that was not put in, that was taken out before it ever got out of DOE.

But the point I want to make is the money for the laboratories is in there, that $200 million. We took $35 million out of the $230, so you still have about $195 million left. So I do not really see we have disturbed that in any way at all.

What we are talking about is funds being reduced for the very first time. DOE requested $3.75 billion, and it was cut to $3.64 billion. We are trying to restore that and come up to the figure the House Armed Services Committee has.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio has 8 minutes, 14 seconds. The Senator from Louisiana controls 17 minutes, 37 seconds.

Who yields time?

Mr. JOHNSTON. Mr. President I yield 3 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 3 minutes.

Mr. DOMENICI. Mr. President, I see the distinguished Senator from Colorado on the floor. I heard the discussion before the Senate by my distinguished neighbor to the north, and I think he said that we ought to put more money in cleanup rather than use it to build more nuclear weapons. Again, I want to suggest that of this $118 million add-on, $35 million is coming right out of the three nuclear deterrent laboratories. If we continue to reduce the funding for the national laboratories, then not only will we not be able to clean up Rocky Flats, which is of extreme importance to my friend, but the scientists from the laboratory in northern New Mexico are the ones designing the new facilities so that they will indeed be safe and clean, and, indeed, they are designing the next generation so there will never be another Rocky Flats as there was a few years ago.

We are told in the letter which I put in the RECORD, by not only that lab director but the one in California at Livermore and the one at Sandia, that if we do not raise the level of funding for their research, development, and training to keep their core scientists, they are going to lose their capability to attract and do the kind of job they have been doing.

So I believe funding the laboratories is funding cleanup because, indeed, they are the scientists who are going to enable us to do more cleanup in better ways with less money and build safer facilities and, indeed, safer nuclear weapons in the future.

Having said that, let me just make one additional comment. The nuclear laboratories now, so everyone will understand, their mission is not going down. But, of late, there is a new mission being added to these deterrent laboratories. It has to do with safety of the arsenal on nuclear weapons. A panel established by the U.S. House Armed Services Committee, the Drell Commission, has just reported, and they indicate that starting very soon the deterrent laboratories are going to have a brand new safety mission. It is not safety of the new weapons—they are doing that—but safety of the entire arsenal.

As peace breaks out and you expect long periods of time with extremely safe weapons, the report indicates that a great deal of real science, real math, real physics, real machinery is going to be needed for them to be able to do that job. So, it seems to the Senator from New Mexico that this is a basic question that goes as follows, and I hope the Senate will listen to this very simple explanation.

The Department of Energy estimated that when the year ends, there would be $140 million of the cleanup fund unused; $140 million. The committee, under the leadership of Senator JOHNSTON and Senator HATFIELD, used $108 million of the $140 million. They should use it. Why should you leave it there when the Department of Energy is telling you it is not going to be used? Surely it would be nice to leave it there so they will have more at the end of the year, but it was used for things the committee chairman and ranking member thought were needed for these United States. That is the issue.

Senator GLENN wants to put it back. They will have more unused at the end of the year.

The PRESIDING OFFICER. The time of the Senator from New Mexico has

expired. The Senator from Ohio has 8 minutes, 40 seconds.

Mr. GLENN. I yield myself what time I may require.

Facts do not back up what the Senator talked about because DOE wanted an extra $900 million this year. They can use it. They wanted an extra $900 million.

If the distinguished Senator from New Mexico—could I have the attention of my colleague, please, just a minute? I want to point out something. We did not cut my colleague's laboratory money. There was $230 million above the administration request, $200 million of which was yours and would go to the laboratories. We only cut $35 million out that account. We did not go into it and cut the laboratory money.

So the laboratory money that my colleague received, wherever it came from—I am not aware of that, my colleague explained it a little while ago—it is still in there. We have not touched that, except for $5 million. We could yield that back if that is a real problem.

The Department requested more money for EM. We knew they could use it and we did not touch the lab money. You still have your $200 million in there. We cut out of weapons production and surveillance $83 million and added that to the $35 million above, and that is where our $118 million came from. So we do not disturb your lab money.

Mr. DOMENICI. If the Senator will yield on our time, I do not have the same arithmetic. I have it as $212 million from which you take $35 million. I do not care to argue about it, but the point is all of that add-on, whether it is $212 million or whatever, came from the Department of Defense account transferred to this bill.

So, to the extent my colleague is taking that money out, he is taking it and it was transferred there for that purpose.

Mr. WIRTH. Will the Senator yield?

Mr. GLENN. Two minutes to the Senator from Colorado.

Mr. WIRTH. On that front, the distinguished Senator from New Mexico, with whom I have worked on so many issues, and I am sorry that we differ on this one, the Senator from New Mexico said you have to have this money to clean up Rocky Flats and $35 million is cut from cleaning up or building the systems for cleaning up Rocky Flats. It is not true. As the Senator from Ohio pointed out, this $35 million is coming out of the weapons research, development, and testing.

Second, the distinguished Senator suggested that we have to spend a lot more money on safety. Let us look at the reality of that. We have cut the B-90. We have cut the SRAM T. Canceled two weapons programs, hurray. That is a good thing. The cold war is over. So why do we need tens of millions of dollars of additional money for safety programs.

Finally, assuming that the Glenn amendment passes, what are we left with?

We are still left with $178 million above the administration's own request. I have not heard those figures refuted anywhere. The research, development and testing account of concern to the Senator from New Mexico and his laboratories will still be $178 million above the administration's request. Even after the Glenn amendment is agreed to, we are still $178 million above the administration's own request. That outlines just what this is all about.

Do we want to spend even more above the administration's request on new weapons development, or do we want to start to meet the administration's request and clean this up? That is the choice.

The PRESIDING OFFICER. Time allocated to the Senator has expired. The Senator from Louisiana controls 13½ minutes.

Mr. JOHNSTON. Mr. President, I yield myself 2 minutes. The question was asked by the distinguished Senator from Colorado why do we need money for R&D on weapons when, in fact, we are canceling weapons? It is a very good question. The answer, though, Mr. President, is really pretty straightforward.

First of all, some of our weapons were unsafe. For example, the Shram A, which was a missile we used to have on all of our B-52 planes had in effect, it did not have insensitive high explosive as the trigger for the nuclear weapons and, in fact, there was a tremendous danger from the Shram A in case of an ordinary fire because the fire could detonate the explosive and that, in turn, would not result in a nuclear explosion but it would result in an ordinary explosion which, in turn, could deliver radioactive nuclear material over a wide area.

So part of the R&D fund presently needed is not only in the follow on to the Shram A to find an insensitive high explosive solution to that problem in that weapon, but in many other weapons, in fact, in every set of nuclear weapons.

Mr. WIRTH. Will the Senator yield?

Mr. JOHNSTON. Yes. Let me first talk about some of the other areas.

So we have a cold complex of R&D problems there.

Second, we also have environmental problems in the production of nuclear weapons. So part of the production money is for environmental compliance in the production side which does not come under Leo Duffy's program. It comes under the production side, but it is, nevertheless, for environmental compliance. Those are two illustrations of why we need the money. I yield to the Senator.

Mr. WIRTH. I appreciate the distinguished Senator yielding and I appreciate his concern for it. When I mention the B-90 and the SRAM T, I understand the other safety issues being worked on. But the original appropriation and authorization given to the Department of Energy assumed their people would be building the B-90 and SRAM T. Where have all those people gone? What are they doing? We canceled two programs and yet we have increased the amount of research, development, testing and production to go on.

We canceled the SRAM T and B-90, but we need more money? I do not understand.

Mr. JOHNSTON. We are talking about the R&D. We did not need the R&D in the SRAM T. Before they were canceled, they were ongoing programs, well tested, well developed. What we needed was R&D to test follow-on R&D programs to those programs that are canceled.

In other words, you do not need a research program to produce a Mercury Marquis automobile like we have on the lot out there. They are already ongoing. We need a research program to produce the car for the year 2000, and that, in effect, is why we need R&D money by virtue of the cancellation of ongoing programs.

Mr. President, I think we could perhaps shorten the time, unless the Senator would like to use all of his time.

Mr. GLENN. I want to yield 3 minutes to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I thank the Senator from Ohio and I rise to support strongly the Glenn amendment.

In the State of Washington, we have had the experience of having in our State the largest nuclear waste dump in the free world. It may be the largest one in the entire world. We simply are not certain of the Soviet Union. We are not talking about optional activities in the cleanup that was mentioned by the Senator from Ohio. We are talking about the Federal Government living up to its environmental laws, living up to the milestones that it has agreed to with the State of Washington, which it is not doing.

At Hanford alone, one analysis indicates the environmental accounts are nearly $400 million below what is needed by these laws. For this reason, which was mentioned by the Senator from New Mexico, there was an additional amount of money that was not spent this year. That is why I have introduced the trust fund bill which would provide that moneys are carried over and kept in these trust funds just as we do with the highway trust fund, so these long-term accounts are available for the cleanup at Rocky Flats

and at Hanford and at the other sites in the United States that have been contaminated by the U.S. Government.

This money should be kept and would be kept and will be kept. I am hopeful that the Armed Services Committee will come forth with this language in their bill.

I will close my remarks by saying this. This marks a shift at the Hanford site from production of weapons to cleanup of weapons and a new technology and a new future. There are more people employed at Hanford now than there were when we started this program 5 years ago. Those people are employed in new techniques, and I support the laboratory concept as indicated by the Senator from New Mexico.

We want a vitrification plant built at Hanford; we want the development of abilities to handle nuclear waste which we do not have now. We want to develop this so that it can go to other places in the country and assist them. This can be done with a trust fund account and it should be there. We do not want to go back to a production account. The production accounts have now been stabilized and are being shifted into environmental cleanup.

Mr. President, I am here tonight to speak strongly in favor of the Glenn amendment under consideration tonight.

There is absolutely no doubt that the cleanup of Department of Energy sites is being dramatically shortchanged. Last year, a reputable trade magazine said that the funding necessary for cleanup at DOE installations was halved by the administration in its final budget submission. Just this year, memos have been leaked suggesting that hundreds of millions of dollars were lopped off of the budget needed to meet environmental laws at DOE installations.

We are not talking about optional activities, here; we are talking about the Federal Government living up to the law.

The Glenn amendment would shift funding into this much-needed account. We owe it to our country, and to all of those who are still being exposed to the contaminants of the nuclear arms race, to vote in favor of this amendment.

I intend to do so.

The PRESIDING OFFICER. The time allocated to the Senator has expired.

Mr. ADAMS. I hope the Glenn amendment will be adopted and that we will clean up the mess that has been left by a destructive program.

The PRESIDING OFFICER. The Senator from Ohio controls 1 minute, 55 seconds.

Mr. GLENN. How much time on the other side?

The PRESIDING OFFICER. The other side controls 9 minutes, 30 seconds. Who yields time? The Senator from Louisiana controls 9½ minutes. The Senator from Ohio has 1 minute, 50 seconds.

Mr. JOHNSTON. Mr. President, does anyone on my side of the aisle want to be recognized?

Mr. President, I will repeat quickly the very simple argument that we have made, which is that between 1988 and 1992, we have quadrupled—that is a 400 percent increase in environmental cleanup. Mr. President, it is more money than Leo Duffy, who is the Assistant Secretary for Environmental Cleanup, can sensibly spend.

The inspector general of the Department of Energy said that this is the No. 1 account to watch for fraud, waste, and abuse because there are dollars, like my former colleague Russell Long used to talk about getting on top of the Washington Monument and throwing the dollars out and they will do some good out there somewhere.

Mr. President, this is one of the greatest priorities that the country has, to clean up nuclear waste. But quadrupling the money in a 4-year period ought to be enough. And, in fact, it is enough; and, in fact, it is more than they can spend right now, Mr. President. As I pointed out, we have almost a half year's money which is unspent and remains in the account; almost a half year's money—$421 million were in uncosted balances, that is work not performed. Altogether it amounts to $1.327 billion, which is the equivalent to a half a year's funding.

That is simply it, Mr. President. We believe we have as much as they can use, more than they can sensibly use.

If Leo Duffy can spend what we have in here, he will be a great Federal bureaucrat, he will be a wonderful Assistant Secretary, because it is a huge challenge to spend the $3.6 billion which we have provided.

I have made it clear, Mr. President, I believe that the savings in slippage, the $108 million, which was an account provided here, was not raiding this account but was a lesser reduction for savings and slippage than we had last year. It is a much lesser percentage than we had last year. It was much less than the Department of Energy recommended last year. It is a much less percentage than we have for the Corps of Engineers or our other accounts.

It is an ordinary budgetary function to have savings and slippage because of delays, because of weather, because you cannot get a permit. It is an ordinary accounting practice, Mr. President. It is not raiding this account.

So, Mr. President, at the appropriate time I will move to table this amendment, and not because we want less money for this very high priority but because we believe there is enough money in here, in fact more than we can sensibly use. So while I share the goals of the Senator from Ohio and the Senator from Colorado, we believe the budget as presented accomplishes those goals.

The PRESIDING OFFICER. The Senator from Ohio has 1 minute, 45 seconds.

Mr. GLENN. I yield myself such time as I may require.

Mr. President, a 400-percent increase when you start at a low amount does not amount to that much. What we need is somewhere between $5 to $8 billion a year. We were up to $3,705,000,000. This year is cut for the first time to $3,064,000,000. That sends exactly the wrong signal.

As far as the concerns of the Senator from New Mexico, we leave his $200 million, or almost that, not quite, but almost the $200 million he wanted in here for the laboratories. All we cut out was basically the excess over that. That is what we had agreed to in a colloquy we were going to have earlier today.

So, Mr. President, this is something I feel very strongly about. We should not cut EM funds.

I yield the remainder of the time to the Senator from Colorado.

Mr. WIRTH. Mr. President, the basic issue before us is do we want to spend more money on nuclear weapons programs than even the administration requested or do we want to help clean up a problem which is out there getting worse and worse and worse, meeting the request made by the Department of Energy. That is the simple issue that we have. Is the cold war over or not? Are we going to clean up for future generations or are we going to spend more than even this administration requested for research, development, and testing?

The PRESIDING OFFICER. The Senator from Louisiana has 5 minutes, 50 seconds.

Mr. JOHNSTON. Mr. President, I will not use my entire 5 minutes.

Mr. President, as stated by the Senator from Colorado, you would think that what our committee proposes is to take money from waste cleanup and put it to build more nuclear weapons. Mr. President, I can assure you that the distinguished Senator from Oregon [Mr. HATFIELD], and I would propose no such thing.

We are not trying to build new nuclear weapons. To the contrary, we are trying to make those that we have safer. For example, we have here $123 million for verification and control. That is not building new nuclear weapons, Mr. President. That is ensuring that those we have in stock can be operated safely, can operate as they are supposed to operate. It is a very expensive program. Production and surveillance—surveillance is seeing that the tritium levels are proper, and indeed we are going to have to trade tritium in some weapons. In other words, as we take the B-90, for example, out of production, we are going to have to take the tritium from it and put it in other weapons because, as my colleagues

know, the half-life of tritium is about 81 years, so that it is a rapidly decaying nuclear element but an essential nuclear element.

In any event, Mr. President, there are a large number of items in this R&D account having nothing to do with building new nuclear weapons but, rather, making those we have safer, more reliable, and it is absolutely essential that we do this work. In any event, Mr. President, we did not take the money out of this cleanup account to put in that account. To the contrary, those were two separate functions.

Mr. President, I know that if my colleagues have been listening to this debate and have kept from falling asleep, not because it is not important but because when you are talking budget it is a very complex thing, let me just assure you of this one simple fact. We have not taken needed money from nuclear cleanup in order to build nuclear weapons. It simply has not been done. To the contrary, we have put more money in the cleanup of these plants than can possibly be used, and in any event we have not taken any money out of that account to put in the production of nuclear weapons.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Ohio has 15 seconds remaining.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

Mr. GLENN. I yield back, and ask for the yeas and nays.

Mr. JOHNSTON. Mr. President, I move to table the amendment and ask for the yeas and nays.

Mr. GLENN. I ask for the yeas and nays on tabling.

The PRESIDING OFFICER. The yeas and nays are requested on the motion to table.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Vermont [Mr. JEFFORDS] is necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. INOUYE] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness.

The PRESIDING OFFICER (Mr. ROCKEFELLER). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—54

Bentsen	Domenici	Moynihan
Bingaman	Durenberger	Murkowski
Bond	Ford	Nickles
Breaux	Garn	Packwood
Bryan	Gramm	Pressler
Bumpers	Grassley	Reid
Burdick	Hatch	Rudman
Burns	Hatfield	Sasser
Byrd	Heflin	Seymour
Chafee	Helms	Shelby
Coats	Hollings	Simpson
Cochran	Johnston	Smith
Conrad	Kassebaum	Specter
Craig	Lott	Stevens
D'Amato	Lugar	Symms
Danforth	Mack	Thurmond
DeConcini	McCain	Wallop
Dole	McConnell	Warner

NAYS—43

Adams	Gore	Mitchell
Akaka	Gorton	Nunn
Baucus	Graham	Pell
Biden	Harkin	Riegle
Boren	Kasten	Robb
Bradley	Kennedy	Rockefeller
Brown	Kerrey	Roth
Cohen	Kerry	Sanford
Cranston	Kohl	Sarbanes
Daschle	Lautenberg	Simon
Dixon	Leahy	Wellstone
Dodd	Levin	Wirth
Exon	Lieberman	Wofford
Fowler	Metzenbaum	
Glenn	Mikulski	

NOT VOTING—3

Inouye	Jeffords	Pryor

So the motion to lay on the table the amendment (No. 572) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BASE REALIGNMENT AND CLOSURE

Mr. BOND. Mr. President, I rise to discuss one provision that was included during the full committee markup of this bill.

This was the amendment offered by Senators NICKLES, HOLLINGS, HARKIN, and myself to prevent the Corps of Engineers from spending any of their funds to implement a reorganization plan—unless the plan was enacted following normal congressional procedures.

This of course is aimed specifically at the Commission on Base Realignment and Closure which has decided to include an ultimatum on corps reorganization in their final report.

I have previously spoken to Secretary Cheney, written to the Commission, as well as cosigned a letter to the President urging that the corps plan not be included in the base-closing package.

I believe the BRAC has overstepped its bounds, and I believe a court challenge of their final product would prove successful. However, our amendment will also accomplish this goal and I hope it is retained.

My major concern about the Base Closing Commission's potential decision to include the Army Corps of Engineers reorganization plan in the base closing package is that the Commission does not have the expertise adequately to review the proposal.

While it is my belief that the closing of military bases will have some effect on the corps mission, the need for the Corps of Engineers to regulate our waterways, mitigate flood damage, and aid in Superfund cleanup has not diminished. Tying the restructuring of a predominately civilian-run and -oriented agency to the process of redefining our defense needs is a mistake. These two issues should be considered separately.

However, I do believe that reductions and reforms can be made in the corps. In particular the large civilian bureaucracy that has been built up should be reviewed. Thus I do not see our actions to block the BRAC action meaning anything other than we believe Congress—not the BRAC should review the corp plan.

Clearly the corps proposal should be reviewed by those with the expertise and understanding of Superfund, swampbuster, water quality, and wetlands issues. Therefore, Mr. President, I want to thank the committee for accepting our language, and hope that it will be preserved in conference.

Mr. President, I wish to spend a few moments discussing just one of the many issues I don't believe the corps proposal adequately reviewed. The Kansas City district is only one of the two districts which form the Corps National Design Center for the Superfund and Defense Environmental Restoration Programs—the programs which do the cleanup of the hazardous and toxic wastes in both civilian and DOD facilities.

In addition, the KC district's expertise has made it the center for handling the termal destruction of explosive wastes—obviously a key problem in many base cleanups.

The Kansas City district office has put together an excellent team of environmental scientists and engineers who then provide design and construction services for the EPA whenever the Federal Government is the lead agency, or to State agencies if they are the lead. Their area of responsibility now covers 50 percent of the Nation, and Superfund projects they are working on currently include sites in New Jersey, New York, Arkansas, Washington, Idaho, Louisiana, Oklahoma, and Kansas.

Clearly the KC corps has developed a special niche, but from everything I and the KC working group have been able to ascertain, the corps has not factored in the effects of a breakup or transfer of parts of this team. And I certainly do not believe the Base Closing Commission is designed to address these types of issues.

At a minimum, closing the Kansas City office will cause delays and confusion in removing hazardous and toxic

wastes from cleanup sites. I believe that is too high a price to pay.

Mr. President, the employees of the KC corps office, as well as the community of Kansas City are more than ready and willing to address the issues raised by the corps plan—we only ask that we be given the chance to present our case, and in a forum which understands all the issues involved. That is what our amendment will do, and that is why it is so important that it be retained.

I thank the managers and yield the floor.

Mr. DOLE. Mr. President, I wonder if I might inquire of the majority leader the intentions of the managers on this bill for the remainder of the evening.

Mr. JOHNSTON. Mr. President, if I may respond to the distinguished minority leader, we would like to be able to work this out to have no more votes tonight if we can get all the amendments locked in for tomorrow so that we will know what work we have to do. Otherwise, we may have to plow ahead tonight. I hope we can get at least an identification of the amendments and exclude the others. I think there are a few amendments lurking. I wonder if Senators might be willing to identify their amendments and make a list of them and have all other amendments not in order, and then we could put it off until tomorrow morning and start at 9:30 sharp.

Does anyone have an amendment?

Mr. FOWLER. I have an amendment.

Mr. JOHNSTON. The Senator from Georgia, Mr. Fowler; and that relates to?

Mr. FOWLER. It is cosponsored by the Senator from Vermont, Mr. JEFFORDS. We have one on renewable energy.

Mr. DOLE. If the manager will yield, I think I can just submit a list of amendments. We have kept track of not many. Some may not be offered, but at least they would be in the loop.

Mr. JOHNSTON. Senator BUMPERS, did you have an amendment?

Mr. BUMPERS. Mr. President, I do have an amendment dealing with the superconductor super collider.

Mr. JOHNSTON. And we have an amendment by Senator KENNEDY.

Mr. HATFIELD. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. HATFIELD. Mr. President I have a list here that are all that I know of from the Republican side. You can just copy from them and announce them if you wish.

If the chairman will yield, I would just like to enumerate: Mr. STEVENS has one; Mr. D'AMATO has one; Mr. KASTEN has one; Mr. NICKLES has two; Mr. CHAFEE has one; and Mr. WALLOP has two.

Mr. JOHNSTON. And I believe Senator SPECTER and Senator WOFFORD have an amendment.

Mr. HATFIELD. And Senator DOLE has one.

Mr. DOLE. It may or may not be offered.

Mr. HATFIELD. And possibly Mr. GARN may have an amendment to Mr. FOWLER's amendment.

Mr. JOHNSTON. And on our side of the aisle there is Senator KENNEDY, Senator BUMPERS, and Senator FOWLER.

Mr. KENNEDY. Mr. President, I believe we can work ours out.

Mr. JOHNSTON. Yes, I believe we can work that out. But I wanted to preserve it on the list.

Does Senator WIRTH have an amendment?

Mr. WIRTH. Yes.

Mr. JOHNSTON. And that relates to?

Mr. WIRTH. Enriched uranium.

Mr. JOHNSTON. Are there any other amendments on our side of the aisle?

Mr. MOYNIHAN. Mr. President, Senator D'AMATO and I have two amendments that I believe will be accepted.

Mr. JOHNSTON. Are there any others on our side of the aisle?

Mr. President, I ask unanimous consent that there be no further rollcall votes—I guess the majority leader will do that—that the only amendments in order for this bill will be as follows:

An amendment by Senator STEVENS relating to Bethel, AK, Corps of Engineers construction;

Two amendments by Senators D'AMATO and MOYNIHAN relating to Onondaga Creek in New York and to the Montauk Point in New York, a Corps of Engineers project;

Senator KASTEN, relating to a State road and Ebner Coulees project. It is a Corps of Engineers project;

Two Nickles amendments relating to the Corps of Engineers' fee increases and the Oklahoma City riverfront project;

A Chafee amendment relating to a study and technology demonstration project at Cranston, RI. That is a corps project;

Two Wallop amendments, one relating to Shoshone irrigation project and the second relating to the Buffalo Bill dam. Those are Bureau of Reclamation projects;

A Specter and Wofford amendment relating to Wyoming Valley;

A Dole amendment;

A Kennedy amendment relating to I believe it is a Corps of Engineers project;

A Bumpers amendment relating to the superconducting super collider;

A Fowler and Jeffords amendment relating to renewable energy;

And a Wirth amendment relating to enriched uranium.

Mr. HATFIELD. With a possible amendment in the second degree to the Fowler amendment, by Mr. GARN.

Mr. JOHNSTON. A possible amendment in the second degree to the Fowler amendment, by Mr. GARN. And a possible Johnston amendment just in case we have left anything out. I further ask unanimous consent that no nongermane amendment——

Mr. HATFIELD. Will the Senator yield? And a possible amendment in the second degree by Mr. GRAMM to Mr. BUMPERS.

Mr. JOHNSTON. Yes, and a possible second degree amendment by Senator GRAMM, of Texas, to the Bumpers amendment; that, other than that, no second degree amendments be in order unless agreed to by both managers on both sides of the aisle and that no other amendments other than those enumerated be in order.

The PRESIDING OFFICER. Is there objection?

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, reserving my right to object on two Wallop amendments, I would like to reserve the right to unlimited second-degree amendments on those two amendments. They deal with Bureau of Reclamation projects.

Mr. JOHNSTON. An unlimited number of second-degree amendments?

Mr. BRADLEY. An unlimited number.

Mr. JOHNSTON. I amend the request by reserving to Senator BRADLEY the right to amend in the second degree, the Shoshone irrigation project and the Buffalo Bill dam project amendments to be proposed by Mr. WALLOP, without any limitation on the number of second-degree amendments.

Mr. GARN. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Utah may proceed.

Mr. GARN. Mr. President, I hesitate to object but this is an amendment which was just shown to me 2 or 3 minutes ago. I had no time to examine it or take a look at it, but to see enough that we are cutting out any funds in this area, nuclear power available for space exploration initiative. That is a priority of the President and this Senator. We zeroed funds for it last year.

Normally there is no person on this floor who is more cooperative in trying to expedite a schedule, but if the Fowler amendment stays in, with this little bit of examination on it, I will object and do object at this time.

The PRESIDING OFFICER. Objection is heard.

Mr. JOHNSTON. Mr. President, did the Senator object to the unanimous consent?

Mr. GARN. Yes, I did, unless the Fowler amendment is withdrawn.

Mr. JOHNSTON. Would the Senator withhold on that? We did not ask for a time agreement, simply that the amendment be in order—this whole list and no others be in order. So if the Senator from Utah wishes to filibuster he is certainly free to do so or amend in the second degree if he wants to amend the request. But what we would

like to do is lock out all those other amendments that people might think of overnight like abortion or busing or whatever else, so we can finish this bill.

Mr. GARN. The Senator from Utah understands that, but it is a lot easier and quicker to object to this one amendment, which could be deleted rather than possibly having a filibuster.

Mr. JOHNSTON. I suspect he will be able to do that tomorrow. In other words, my colleague will be able to filibuster this amendment tomorrow.

Mr. GARN. I believe the chairman did not understand that it requires a lot less talk to say I object than it does to filibuster an amendment. We could solve this problem rather easily by simply not including the Fowler amendment as part of the unanimous-consent agreement and letting the rest be listed.

Mr. JOHNSTON. Mr. President, we really need to get this bill dispatched. I hope my two dear friends can come to some accommodation on this. I submit all Senator FOWLER is asking is the right to submit the amendment. The Senator can amend it, he can talk it to death.

Mr. HATFIELD. If the chairman would yield, I would like to only suggest all of us are here to do the business of the Senate. If we cannot get this kind of unanimous-consent agreement, I hope the leadership would keep us in session and let us proceed to handle these amendments as they come up, one by one. If there is a rollcall required, so be it.

I feel otherwise we just go on and on and on, on these bills. It is unnecessary.

I hope the leadership would consider a late session tonight.

Mr. JOHNSTON. Mr. President, I think we only have a couple of big amendments and I think if we stay a lot of these will disappear.

Mr. DOLE. Will the manager yield?

Mr. JOHNSTON. I hate to ask Senators to stay but I think the work will probably be shortened in the long run if we do.

Mr. DOLE. I think a lot of the Members have already disappeared. They were under the impression there would be no more votes. Maybe not rightfully, but at a quarter of 11, we have only been on this bill a little over 3 hours, not quite 3 hours. It is $21 billion.

I wonder if we expect to finish it before morning.

And if the Senator from New Jersey wishes to offer unlimited second-degree amendments I would interpose an objection on behalf of Senator WALLOP.

Mr. JOHNSTON. Mr. President, we are really not asking for very much. We are not asking anyone to surrender his right to filibuster. All we want to do is lock in these amendments because, believe me this bill can expand and expand and expand if we do not try to lock these things in tonight.

I ask Senators who do not just love staying here at night, to help us out because it will be another night we have to stay here. We have to go back on the crime bill tomorrow. People will be able to think of still more amendments.

This is a must-pass appropriations bill. If we do not lock in these amendments tonight, then by tomorrow it will expand. There will be another 30 amendments. By the time we finish with it, it may take a week. If we can, let us lock these in tonight since we are so close. Why do my two friends not get together and figure this thing out and let us move on.

Mr. SIMON. Mr. President I originally planned to have an amendment on this measure to increase the appropriation for desalination research. But the measure came up quickly this evening and we have not had a chance to prepare adequately for the amendment.

What is clear is that desalination research must become much more of a priority for this Nation and for other nations. Right now California, with 840 miles of shoreline, faces serious water shortages and every State in the Union will pay higher prices for fruits and vegetables because of this California water shortage. Florida faces a similar problem. And Florida has 1,800 miles of shoreline.

We are living in a world of increasing population and declining resources of water for drinking, agricultural, and industrial purposes.

We now depend on less than one-half of 1 percent of the world's water supplies for these purposes. The rest of the water of the world is salt water.

Five of us in the Senate were in the Middle East in December and leader after leader in the Middle East spent much more time talking to us about water than about oil. A recent issue of *Foreign Policy* magazine came out with an article titled "Water Wars" in which the author states that the next war in the Middle East is more likely to be over water than land.

My problem is this, and I address this question to Senator JOHNSTON: I have an amendment prepared to provide increased funding to the Bureau of Reclamation for desalination research, but frankly at this late hour, without adequate contact with my colleagues, it could be difficult. But if I see no alternative I will propose my amendment. But if I could be assured by the chairman of the subcommittee that he will make every effort to secure at least $5 million for desalination research in the Bureau of Reclamation conference with the House, I will not propose the amendment.

Mr. JOHNSTON. I agree with the Senator from Illinois on the importance of desalination research and I wish I could quickly accommodate an amendment this evening. But to do it hastily could do an injustice to other good causes. Obviously I cannot guarantee the Senator from Illinois that we can find the $5 million for the desalination program of the Bureau of Reclamation but I can assure him that I will make every effort to accommodate this very real need.

Mr. SIMON. On the basis of that assurance, Mr. President, I will not offer my amendment.

Mr. JOHNSTON. Mr. President, while we are trying to work out this time agreement, I think we are ready to move on to the next amendment. I urge whoever is ready, to come up with an amendment.

Mr. BUMPERS. Mr. President, I wonder if the distinguished floor manager will yield for a question?

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Would the distinguished floor manager respond to a question if he knows the answer? There is a reservation for a second-degree amendment by Senator GRAMM—I assume it is of Texas—to the super collider amendment. Could the Senator tell us the nature of that?

Mr. JOHNSTON. No. I do not know the nature of either the first-degree or the second-degree amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I have two amendments on behalf of myself and Senator MOYNIHAN. One is dealing with Onondaga Lake. It is a technical correction to comport with a request of the Army Corps of Engineers. There is no money. It is a cleanup project of a lake.

The other concerns a Montauk lighthouse, which was the first Army Corps of Engineers project undertaken by a young general, General Washington, I believe. It would insert and provide $225,000 in funds appropriated by the Secretary of Army acting through the Chief, Corps of Engineers, to continue a reconnaissance study for Montauk Point.

The PRESIDING OFFICER. The Chair would point out to the Senator from New York the Senator from Louisiana still retains the floor.

Mr. D'AMATO. I ask if my distinguished colleague from Louisiana will yield?

Mr. JOHNSTON. Mr. President, I wonder if the Senator from New York would agree to our accepting the amendment on Montauk Point. As far as the Onondaga amendment we will be in conference and we would like to work on it in conference but not accept it at this point. Would that be agreeable to the distinguished Senator? We will look at this problem sympathetically in conference, but I am advised by staff that there is a problem in accepting the amendment at this point.

Mr. D'AMATO. One out of two at this hour in the evening is not bad. I am wondering if I might ask that we keep the list open for the purposes of considering Onondaga. There is no money involved. It is a technical correction which the Army Corps of Engineers pointed out to us. If we could do that maybe by tomorrow, why, we might be able to dispose of it rather than put it off indefinitely.

Mr. JOHNSTON. We are not asking for any unanimous consent to lock it out at this point. But I would request that the Senator withdraw Onondaga.

Mr. D'AMATO. I withdraw Onondaga.

Mr. JOHNSTON. In that case, Mr. President, on this side, we are prepared to accept Montauk.

Mr. HATFIELD. We are prepared to accept it also.

The PRESIDING OFFICER. Will the Senator from Louisiana relinquish the floor so the Senator from New York can proceed?

The Senator from New York is recognized.

AMENDMENT NO. 576

(Purpose: To make funds available to continue the reconnaissance study for Montauk Point, New York)

Mr. D'AMATO. Mr. President, I ask that the amendment on Montauk that has been submitted to the desk be considered.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for Mr. MOYNIHAN (for himself and Mr. D'AMATO) proposes an amendment numbered 576.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 16, after "99-662", insert the following: ": *Provided further*, That with $225,000 of the funds appropriated herein, the Secretary of the Army, acting through the Chief of Engineers, is directed to continue the reconnaissance study for Montauk Point, New York, to be derived by transfer of funds otherwise made available to conduct a study of Onondaga Lake, New York".

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 576) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I wonder at this point if the Senator from Arkansas [Mr. BUMPERS] would be prepared to lay down his amendment and begin the debate on it and go for such time as he feels like going tonight, come back and commence it first thing in the morning?

Mr. BUMPERS. Mr. President, I am not prepared to offer that amendment right now.

Mr. JOHNSTON. I wonder if the Senator wants to offer it tomorrow?

Mr. BUMPERS. Yes.

Mr. JOHNSTON. Mr. President, I do not want to make Senators offer their amendments at a time when they do not want to. I would say we are ready to do business. I hope Senators will not keep us in quorum calls all day tomorrow while we are trying to get this bill done. This is a must-pass bill.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, while there are deliberations going on, I wonder if the majority leader will give us some idea as to what time he proposes to vote on cloture tomorrow. Normally it would be 1 hour after we come in, but I assume the vote would not occur then by unanimous consent. I am curious. If we get cloture on that bill then, of course, we are on that bill until we finish it; is that not correct?

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I will later this evening, at the conclusion of the consideration of this bill, seek consent to have the vote on the motion to invoke cloture at 2 p.m. tomorrow. As far as I know, there is no objection to that. We have discussed it with a large number of Senators and have had no objection.

It is my understanding from a previous discussion that if cloture is invoked, that since the agreement giving the majority leader authority to proceed to this bill permitted it irrespective of the provisions of the rule dealing with cloture, that I would then have the option to either proceed to completion of the crime bill, cloture having been invoked, or after which the energy appropriations bill would recur or to complete action on the energy bill after which the crime bill would recur.

Mr. BUMPERS. Is the majority leader saying he has received unanimous consent for that or will seek it?

Mr. MITCHELL. Has received it.

Mr. BUMPERS. You have received it?

Mr. MITCHELL. Yes, previously.

Mr. BUMPERS. And it is the majority leader's present plan then after cloture is voted either way to continue with the energy and water bill?

Mr. MITCHELL. No, it is not.

Mr. BUMPERS. I am sorry. I misunderstood the majority leader.

Mr. MITCHELL. What I stated is I believe I have the authority to elect to proceed with either bill if cloture is invoked. I have not made a decision on which bill to then proceed with and will not make one until tomorrow and have a chance to consult with the Republican leader and the managers on both sides of both bills, the crime and energy bills.

Mr. BUMPERS. Out of curiosity, Mr. President, I labored under the assumption that once we vote cloture, then we are on that bill until it is finished unless a unanimous consent agreement changes that.

Mr. MITCHELL. Mr. President, if I might respond, the unanimous-consent agreement with respect to the energy and water appropriations bill explicitly states in the concluding clause "notwithstanding the provisions of rule XXII."

Mr. BUMPERS. I see.

Mr. MITCHELL. Therefore, the authority exists to either proceed with the crime bill after cloture has been invoked, if cloture is invoked, or to move to this bill. I have not made a decision and, obviously, will want to consult with the managers of this bill and the crime bill and the Republican leader before making such a decision.

Mr. BUMPERS. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. WIRTH. Mr. President, I would like to make some brief comments on the question of resuming plutonium operations at the Rocky Flats nuclear weapons plant near Denver—an issue of considerable importance to me and some 1 million Coloradans who live downstream and downwind from that Department of Energy facility. I then hope to engage the distinguished chairman of the Subcommittee on Energy and Water in a colloquy on that subject.

The bill before the Senate contains full funding for the DOE request for $478 million for fiscal year 1992 to support resumption of activities at Rocky Flats. This is in addition to the fiscal year 1991 supplemental appropriation of $283 million for Rocky Flats restart which we passed in the Senate only months ago—on top of the fiscal year 1991 budget of $550 million. We are in the process of spending over $1 billion to get this 40-year-old facility ready to resume plutonium operations in the Denver metropolitan area.

By what calculus of national interest are we spending these enormous sums? I have serious doubts about this use of taxpayers dollars, doubts about the safety of resuming operations at Rocky Flats, doubts about the need to restart Rocky Flats. Let me review these concerns.

First, DOE intends to close Rocky Flats. The end of the cold war provides the opportunity to put our strategic house in order, beginning with the DOE nuclear weapons complex, and in February, the DOE announced its own vision of a streamlined nuclear weapons complex. The Complex Reconfiguration Study outlined several options for

downsizing and consolidating the complex. The only recommendation common to both the more modest scaleback option and the more ambitious consolidation option outlined in that study was to close Rocky Flats.

Yet, even as the Department of Energy states that Rocky must close, it wants us to spend at least $1.2 billion to put Rocky Flats back to work in the interim. With diminished budgets and growing environmental demands, we do not have the budgetary luxury to continue to play all the options. We must make some tough choices and make them sooner than the DOE appears to recognize.

Beyond the budgetary and programmatic issues, there are several very good reasons for the committee to take a hard look at the need for resuming operations at Rocky Flats and the safety of doing so at this 40-year-old facility.

Safety is paramount in nuclear operations, yet DOE will not be able to be in compliance with 69 of its own priority 1 safety orders before it intends to resume operations in Building 559. Just last month, DOE official Vic Stello acknowledged that "by the time we start up we are not going to have achieved the kind of industry standards of excellence that are out there in the commercial sector." These words cannot be very reassuring to the million people living near Rocky Flats.

Even more disturbing was the revelation that DOE has not even completed a comprehensive review of the adequacy of existing safety orders. Secretary Watkins has stated on several occasions that safety would come before production in the new culture at DOE. Why restart operations under these conditions if, in fact, safety is the first priority? I hope that the Senate will insist on rigorous and independent oversight of safety issues at Rocky before restart is considered.

Rocky Flats also has enormous problems with waste storage. Currently, Rocky Flats is in violation of the Resource Conservation and Recovery Act [RCRA]. Further operations will only compound this violation of Federal law. Furthermore, renewed production would soon result in Rocky Flats exceeding the agreed limit of 1,601 cubic yards of transuranic waste on site. Neither Idaho nor WIPP will be able to accept Rocky's radioactive waste. DOE's Richard Claytor acknowledged before the Armed Services Committee that Rocky Flats would likely reach the agreed transuranic waste limit within months of resumed operations. What then?

Finally, the question of need. We all agree that it is important to maintain a safe and secure deterrent. Is it necessary to resume operations at Rocky Flats for that purpose? I do not believe so.

Dr. John Nuckolls, director of Lawrence Livermore Laboratory, stated to the Armed Services Committee on May 9 that the use of retired plutonium pits for new warhead production, including the W–88, is not a question of "if" but of "when." Dr. Nuckolls' prepared statement noted that 'to bypass Rocky Flats, we have proposed a potentially revolutionary approach in which pits from retired weapons are reused. Extensive part reuse could reduce Complex 21 costs and minimize waste generation." Dr. Nuckolls' estimate for manufacturing W–88 warheads with reused its was 2 to 4 years. Other experts have suggested it could be done more rapidly with sufficient funding and sense of urgency. Furthermore, additional safety features could be incorporated in warheads designed to accommodate recycled plutonium pits.

Expert opinion, therefore, appears to be telling us that we can rely on the relatively straightforward—and much less costly—process of manufacturng new and safer warheads with retired plutonium pits, rather than manufacturing a new plutonium trigger for every new warhead. This being the case, we would not need to reopen Rocky Flats for the manufacture of new pits.

In sum, the DOE is moving ahead at great cost to the taxpayer to reopen a facility which they intend to close, which will generate additional waste it cannot handle, which will require scores of waivers to DOE's own safety rules, and which is not necessary to meet U.S. national security goals.

In consideration of this year's defense bill, the Armed Services Committee will, I believe, address these concerns. At a minimum, I hope that the Armed Services Committee will insist that the use of funds for resumption of operations at any building at Rocky Flats be conditioned on:

First, a rigorous oversight by the Defense Nuclear Facilities Safety Board to assure that that resumption of operations is safe; and

Second, completion of a report by the Defense Science Board on the alternatives to resumption of operations at Rocky Flats, including the option of pit reuse.

Involving an independent panel in reviewing and certifying the safety aspects of restart at Rocky is essential. The Secretary of Energy promised last year that an independent panel would review the environmental, safety, and health issues at Rocky Flats before restart. The Conway Board is well suited for that task, and should be expected to do more than simply make recommendations to the DOE.

An examination of alternatives to Rocky restart is equally important. The practice of custom building every plutonium trigger is expensive and wasteful. We have ample numbers of retired plutonium pits in storage which could be adapted for use in new warheads. This promising and cost-saving alternative demands serious and prompt attention. How can we justify expending over a billion dollars to reopen a facility which might be rendered redundant within 2 years? There is no credible national security rationale for doing so.

Mr. President, I would like to, if I might, engage the distinguished chairman of the subcommittee briefly in a colloguy relating to language in the committee report related to the Rocky Flats nuclear weapons plant. The distinguished chairman is well aware of my concerns about it. I appreciate his concern and understanding. I wanted to make sure that we were clear on what was meant by some of the language that was in the report on page 131.

First of all, the report says the Secretary of Energy has informed the committee that an independent panel is not needed to confirm the department's plans for Rocky Flats. Is it true, has the committee taken a position on an independent panel and reviewed that situation?

Mr. Johnston. Mr. President, I am very familiar with the concern of my friend from Colorado with respect to the language about Rocky Flats. I think his concern really is not well taken with this language. If I may explain what this language on page 131 of our report is intended to do.

It is a recitation in three cases, in two cases of what the Secretary of Energy has said, and in another case describing what the House did, and in the fourth case describing what the law is. The committee was not stating its own opinion with respect to the need for an independent body, independent panel, to confirm the need for the start-up of Rocky Flats or as to the seriousness of questions regarding the capability of other facilities to meet the national security requirements directed by the President.

Our language does not say that. We, in fact, did not take a vote on that and our language does not mean that.

All we were doing in this report is pointing out that the Secretary and the President have authority for this and pointing out what they said and detailing what the House had done. That is all our language meant.

So I believe that the fear of the Senator from Colorado that we had somehow taken a clear position on this as a committee is not well-founded. We did not do so.

Mr. WIRTH. Mr. President, if I might continue, I really appreciate that response from the chairman of the committee.

I might just ask one further question. The Senate Armed Services Committee, as the chairman and I have discussed, is in the process of sorting through a whole variety of issues related to our strategic posture—B–2, MX, Trident, and so on. and Rocky Flats fits into that.

Is it my understanding that the Appropriations Committee, in its deliberations, future deliberations on Rocky Flats would be guided by whatever direction was given by the Senate Armed Services Committee?

Mr. JOHNSTON. I would say that that is our habit, that is our standard operating procedure. I cannot imagine that we would not follow that in this case.

There have been cases in the history of the Republic where the Appropriations Committee did not follow the authorizing committee, but I do not know of any reason in this particular case why we would not do so. We are not urging any particular action in this area on behalf of the authorization committee because we have not taken a position on it. We are generally guided, the Senator is correct, by the authorizing committee and we welcome their advice.

Mr. WIRTH. Mr. President, again I appreciate that response by the chairman of the Appropriations Committee and his help overall on this issue.

Mr. JOHNSTON. Mr. President, I thank the Senator from Colorado.

Mr. President, I now reiterate my unanimous consent request with the following change, that with respect to the amendment of the Senator from Georgia, there be only two second-degree amendments to be proposed thereto in order by the Senator from Utah—Is that correct?—germane amendment to the first-degree amendment. Relevant or germane, what was the word? Relevant and germane.

Mr. GARN. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. GARN. I will not object with the understanding of reserving two second-degree, relevant amendments and no time agreement on the Fowler amendment.

Mr. JOHNSTON. Yes. There is no time agreement anywhere in our unanimous-consent request.

Mr. HATFIELD. Will the Senator yield?

Mr. JOHNSTON. Yes, certainly.

Mr. HATFIELD. Did the Senator amend his first request to include an amendment by the Senator from Montana [Mr. BURNS]?

Mr. JOHNSTON. No. But if that is the request——

Mr. HATFIELD. If the Senator would, and a second amendment to be offered by the Republican leader, Mr. DOLE.

Mr. JOHNSTON. I have a Dole amendment, unspecified.

Mr. HATFIELD. There are two Dole amendments.

Mr. JOHNSTON. Two Dole amendments. Is the subject matter specified?

Mr. HATFIELD. Yes. High technology research on one and related to the Corps of Engineers and Reclamation on the second.

Mr. JOHNSTON. Mr. President, I would further amend the UC request by including two Dole amendments specified as——

Mr. HATFIELD. High technology research and relating to the Corps of Engineers and Bureau of Reclamation.

Mr. JOHNSTON. And relating to the Bureau of Reclamation.

Mr. HATFIELD. Will the Senator also——

Mr. JOHNSTON. And the Corps of Engineers. And that there be no Dole unspecified amendment.

Mr. HATFIELD. Will the Senator consider amending his request also to indicate that the Senators should present their amendments in order or may lose their opportunity if they are not here to do so.

As the Senator from Maine, the Democratic leader included on one previous occasion of locking these amendments in, I think that expedited more than any other thing I have remembered, the handling of these many amendments. I tell you what will happen otherwise. These amendments are locked in and then no one will show up to offer those amendments until about 6 o'clock tomorrow night.

The Senator and I will be here as managers of the bill. This has been repeated so often, the inconsiderate attitude and action on the part of our colleagues in not being here to offer their amendments. The Democratic leader I think struck on a very, very fine approach to this. If you are serious about an amendment, you are here to do business. We are here to do business. Why should the managers wait 3 hours, while others in their good time decide it is not convenient, and yet there we are locked into those amendments.

I am only reiterating, I think, what is very well known to all of us. We have all had that experience one way or the other, as we have managed bills. But I hope that maybe the Democratic leader would reassert this proposal that he made so effectively the first time around.

Mr. WALLOP addressed the Chair.

Mr. JOHNSTON. Mr. President, I would not yet ask that we put these amendments in that particular order. I would like to discuss that with the Senator from Oregon. But I wonder if there is any other discussion.

Mr. WALLOP. Mr. President, reserving the right to object, and I shall not, I would like to ask the distinguished Senator from Louisiana if this would preclude entering into a colloquy with the Senator from Rhode Island and the Senator from Wyoming with regard to wetlands.

Mr. JOHNSTON. No, it would not preclude any colloquies or any conversations. Mr. President, I therefore put the request.

The PRESIDING OFFICER (Mr. SANFORD). Is there objection?

Mr. GARN. Reserving the right to object, I have a technical question, in that if it must be germane, I am dealing with an amendment that is talking about deleting money, and I would probably want to add some back. My understanding would be that germaneness would prohibit that. So my only question is, the Senator said relevant and germane?

Mr. JOHNSTON. I strike "germane" and put in only "relevant," with respect to the amendment of the Senator from Utah.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. With the two second-degree amendments.

I thank the Senator.

The PRESIDING OFFICER. Is there objection?

If not, the unanimous-consent request is agreed to.

Mr. JOHNSTON. Mr. President, I point out to Senators that this unanimous-consent request does not guarantee that these amendments will be considered; that when we start rolling tomorrow—and we hope we are going to roll on these things—that when we run out of amendments and third reading is ready, we will be ready to proceed to third reading. I hope Senators understand that, because we do not want to spend the day in a quorum call.

Mr. President, I further would ask unanimous consent with respect to the second-degree amendment of the other Senators that they also be relevant to the first-degree amendments.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. JOHNSTON. Mr. President, I wonder when the majority leader wants to start tomorrow?

Mr. MITCHELL. Mr. President, we have two requests for time in the morning, and so I would suggest, in view of the hour, that we plan to be on the bill at 10 a.m. We will come in at approximately 9:20 with requests for time in the morning. So we will be on the bill at 10 o'clock.

Mr. JOHNSTON. Mr. President, I hope the Senator from Arkansas is here. We can agree to start with his amendment tomorrow.

I guess he is not here.

Mr. President, I ask the majority leader, if we begin this tomorrow and run out of amendments and are simply in a quorum call, is it his understanding that under this unanimous consent and under his instructions to me that we will be ready to move to third reading when we run out of amendments?

Mr. MITCHELL. Mr. President, we, of course, have attempted to accommodate Senators when they have indicated an intention to offer amendments, as every Senator has been in that position. But I think it is fair that Senators be on notice that we want to proceed to get this bill done, and Senators should be prepared to offer amendments if they intend to do so.

I might say to the distinguished manager and the distinguished Republican manager who raised the question about taking the amendments in order, if I could speak with the Senator from Oregon, the current agreement does not preclude a further agreement which would change the order, and put them in an order that the Senators would contemplate makes sense, and is consistent with the schedules of Senators involved. That is what we tried to do in the previous case and it worked out very well, as the Senator from Oregon noted.

I do not know if time permits that either this evening or tomorrow morning, but I would suggest that perhaps first thing in the morning your staffers could consult with the other Senators to prepare the same identified amendments, but in a different order consistent with the schedules of Senators, and then they would be on notice that they would have to proceed in the order suggested.

One of the reasons I was reluctant to accept the invitation of the Senator from Oregon to do that on this, is that when the list was ready I do not believe the managers had in mind, at that point, doing it in a way that precluded Senators if they were not here.

I think you might want to reorganize it in a way that is consistent with your own schedule, and with that of the other Senators. But I would like to proceed with dispatch tomorrow, if the other Senators will cooperate.

I thank the managers for their cooperation. I think among the most superfluous of things I have said today, or in any other day, is my announcement now that there will be no further rollcall votes this evening.

I yield the floor.

Mr. JOHNSTON. Mr. President, I am looking for the distinguished Senator from Idaho [Mr. CRAIG], who wanted to do a colloquy.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I thank my chairman for yielding.

Mr. President, I would like to engage the chairman of the subcommittee in a colloquy in relation to page 83, title III of this appropriations bill. I am referencing the boron-neutron-capture therapy within the biological-environmental research area.

Last year our former colleague, Senator McClure, was able to put in this legislation what we believe was critical and necessary funding to continue the research and the development of the power-burst reactor current at the laboratory in Idaho, to be able to assure that we would be able to progress in this very important research theory and consortium that was developing around this unique form of brain cancer research and medication.

The Secretary of Energy chose not to use that money. In fact, it is my understanding, he would wish to do otherwise.

This year our colleagues in the other body put some money back in the language and this committee in its wisdom, and I think appropriately so, said that the committee directs the Department to review the funding requirements and carry out the research program for the fiscal years of 1990–1995, as well as for the reactor modification required with the funding profile.

What we are saying, and what I think is very important and what I want the Record to show, is that we are asking now—or, more importantly, by law we are directing—the Secretary of Energy to come forth with a plan not only for the necessary modifications, but recommendations to be found no later than August 30 of this year, so that this Congress can then move forward with the appropriate appropriations, based on the schedule that the Secretary will develop and have before this body before the 1st of September.

That is my understanding of the language that is embodied within this particular appropriations bill. What I would like to ask of the Chairman, first of all: Is my understanding correct, that is the intent of the committee at this time?

Mr. JOHNSTON. Mr. President, the Senator is correct. The report from the Department of Energy which we mandate to be submitted to us, including a funding profile, would then permit the Congress to act, and to appropriate for the program.

Really without that funding, the Congress cannot act. This would, in fact, enable us to do that.

Mr. CRAIG. I thank my chairman for yielding. I certainly want to express my gratitude for the leadership the chairman has shown on this issue, along with the ranking minority member, the Senator from Oregon, Mr. HATFIELD. Both have demonstrated important leadership in this area.

I think what is so fundamentally important as we look at some of the changes that are current in the development of energy, and the directions our laboratories are taking, and which we want our laboratories to take, here is a unique opportunity in the area of nuclear medicine for the kind of quality research that is really a world precedent.

In fact, the world is now watching us to see if we are going to be leaders with the power-burst reactor in this nuclear research for brain cancer of this particular type. So it is important that we move forward with the funding profile from the Secretary.

I thank the chairman and leader of this subcommittee on this appropriation legislation for yielding.

I yield the remainder of my time.

Mr. JOHNSTON. I thank the Senator.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting two treaties which were referred to the appropriate committees.

(The treaties received today are printed at the end of the Senate proceedings.)

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO LIBYA—MESSAGE FROM THE PRESIDENT—PM 58

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

1. I hereby report to the Congress on the developments since my last report of January 11, 1991, concerning the national emergency with respect to Libya that was declared in Executive Order No. 12543 of January 7, 1986. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c); section 204(c) of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1703(c); and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c).

2. Since my last report on January 11, 1991, the Libyan Sanctions Regulations (the "Regulations"), 31 C.F.R. Part 550, administered by the Office of Foreign Assets Control ("FAC") of the

Department of the Treasury, have been amended. This amendment, published on May 6, 1991, 56 FR 20541, adds an appendix to the Regulations containing a list of organizations determined to be within the term "Government of Libya" (Specially Designated Nationals of Libya). A copy of this amendment is attached. Since January 11, 1991, there have been no amendments or changes to orders of the Department of Commerce or the Department of Transportation implementing aspects of Executive Order No. 12543 relating to exports from the United States and air transportation, respectively.

3. During the current 6-month period, FAC made 15 decisions with respect to applications for licenses to engage in transactions under the Regulations, as well as 4 amendments to previously issued licenses. Several of these licenses were issued to former employees of the People's Committee for Students of the Socialist People's Libyan Arab Jamahiriya, also known as the PCLS, to permit them to engage in court actions against the PCLS to recover salary, severance pay, and other unpaid benefits.

4. Various enforcement actions mentioned in previous reports continue to be pursued, and investigations of possible violations of the Libyan sanctions were initiated. The recent amendment to the Regulations listing organizations determined to be Specially Designated Nationals ("SDNs") of Libya publicly identifies organizations located outside Libya that have been determined by FAC to be owned or controlled by, or acting on behalf of, the Government of Libya. For purposes of the Regulations, all dealings with the organizations listed will be considered dealings with the Government of Libya. All unlicensed transactions with these persons, or in property in which they have an interest, are prohibited. The initial listing of 48 Libyan SDNs is not intended as a static list, but will be augmented from time to time as additional organizations or individuals owned or controlled by, or acting on behalf of, the Government of Libya are identified.

5. The expenses incurred by the Federal Government in the 6-month period from December 15, 1990, through June 14, 1991, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the Libyan national emergency are estimated at $254,700. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the General Counsel, and the U.S. Customs Service), the Department of State, and the Department of Commerce.

6. The policies and actions of the Government of Libya, such as support for terrorism and international destabilization and the pursuit of offensive weapons systems, particularly chemical weapons, continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. I shall continue to exercise the powers at my disposal to apply economic sanctions against Libya as long as those measures are appropriate, and will continue to report periodically to the Congress on significant developments as required by law.

GEORGE BUSH.

THE WHITE HOUSE, *July 9, 1991.*

REPORT ON CONSERVATION AND USE OF PETROLEUM AND NATURAL GAS IN FEDERAL FACILITIES—MESSAGE FROM THE PRESIDENT—PM 59

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

As required by section 403(c) of the Powerplant and Industrial Fuel Use Act of 1978, as amended (42 U.S.C. 8373(c)), I hereby transmit the twelfth annual report describing Federal actions with respect to the conservation and use of petroleum and natural gas in Federal facilities, which covers calendar year 1990.

GEORGE BUSH.

THE WHITE HOUSE, July 9, 1991.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance, without recommendation without amendment:

S. 1367. A bill to extend to the People's Republic of China renewal of nondiscriminatory (most-favored-nation) treatment until 1992 provided certain conditions are met (Rept. No. 102-101).

By Mr. BENTSEN, from the Committee on Finance, unfavorably without amendent:

S.J. Res. 153. Joint resolution disapproving the recommendation of the President to extend nondiscriminatory treatment (most-favored-nation treatment) to the products of the People's Republic of China (Rept. No. 102-102).

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment:

S.J. Res. 18. Joint resolution proposing an amendment to the constitution relating to a federal balanced budget (Rept. No. 102-103).

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-164. A concurrent resolution adopted by the Legislature of the State of Minnesota to the Committee on Agriculture, Nutrition, and Forestry.

"Whereas the health of Minnesota's dairy industry, which is now in crisis, is key to the economic well-being of the state of Minnesota; and

"Whereas agriculture is the number one revenue-producing industry in Minnesota, and the dairy industry produces the largest share of this revenue; and

"Whereas the current milk price is the lowest farmers have received since September, 1978; and

"Whereas the present milk support price of $10.10 per hundredweight fails to meet dairy farmers' minimum costs of production; and

"Whereas Minnesota has lost 10,000 dairy farmers since 1980, has lost 40 more in the past two weeks, and in the face of the present crisis will continue to lose dairy farmers at an alarming rate, threatening the very existence of the dairy industry in the state; and

"Whereas the income of dairy farmers will be further reduced by an assessment of five cents per hundredweight on nearly ten billion pounds of Minnesota milk in 1991, which is just the latest in a continuing string of increases in fees and assessments paid by dairy farmer; and

"Whereas federal milk marketing orders are discriminatory and skewed to give unfair advantage to large corporate farms of the West and South, suppressing milk prices in the Upper Midwest and inflating prices by several dollars per hundredweight in nontraditional dairy areas; and

"Whereas the dairy farmer has taken more substantial cuts in federal support than any other sector of our economy and agriculture itself, starting with repeal of the April, 1981, six-month price support adjustment for inflation and a continuous series of cuts and reductions in the price support base and fee and assessment increases paid by dairy farmers on milk production in every decision made by the President and Congress; and

"Whereas the Minnesota House and Senate and the Minnesota Governor are committed to preserving the family farm structure and Minnesota's small dairy farmers, Now, therefore, be it

"*Resolved by the Legislature of the State of Minnesota,* That it urges the President, Congress, and the Secretary of Agriculture to immediately respond to the crisis in the Midwest dairy industry by reopening the dairy provisions of the 1990 federal farm law to insure that Minnesota and Midwest dairy farmers receive cost of production plus a reasonable profit for their products; and be it further

"*Resolved,* That the United States Secretary of Agriculture should immediately take action to alleviate the Minnesota and Midwestern dairy crisis by modifying and changing the federal milk marketing order system so as to eliminate the discriminatory provisions from the orders that pay more for milk to Western and Southern producers than paid to Midwest dairy farmers and encourage increased dairy production in markets distant from the Upper Midwest, depressing prices for Minnesota producers; and be it further

Resolved, That Congress take immediate action to alleviate the crisis in the Midwest dairy industry by increasing milk price supports by $2.30 per hundredweight, an increase that will allow midwest producers to break even on costs of production; and be it further

Resolved, That the Secretary of State of the State of Minnesota is directed to prepare certified copies of this memorial and transmit them to the President of the United States, the President and Secretary of the

United States Senate, the Speaker and Chief Clerk of the United States House of Representatives, the Chair of the House of Representatives Committee on Agriculture, the Chair of the Dairy Division of the House of Representatives Committee on Agriculture, Minnesota's Senators and Representatives in Congress, and the United States Secretary of Agriculture."

POM-165. A resolution adopted by the Senate of the State of Michigan; to the Committee on Environment and Public Works:

"SENATE RESOLUTION NO. 76

"Whereas the Highway Trust Fund receives revenue from federal excise taxes on gasoline and diesel fuel, which represent user fees intended to support the country's highway system. However, a portion of this fund is currently being held captive to artificially balance the federal budget; and

"Whereas the most recent five-cent-per-gallon increase in federal fuel taxes allocated only 2.5 cents to the Highway Trust Fund, with the balance allocated to the federal government's general fund; and

"Whereas the current allocation formula for the Highway Trust Fund has the effect of returning only eighty-five percent of the money Michigan taxpayers contribute to Washington back to Michigan; and

"Whereas it is important to immediately address these inequities in order to preserve our state's highway system: now, therefore, be it

"Resolved by the Senate, That we hereby memorialize the President of the United States and the United States Congress to take appropriate steps to release certain funds from the Highway Trust Fund, to ensure that all of the recent federal fuel tax increases be allocated to the Highway Trust Fund, and to amend the Highway Trust Fund allocation formula to assure that Michigan receives its fair share of fuel tax revenue; and be it further

"*Resolved*, That a copy of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Michigan congressional delegation, and the Governor of Michigan."

POM-166. A resolution adopted by the House of Representatives of the State of Illinois; to the Committee on Finance:

"HOUSE RESOLUTION NO. 315

"Whereas the provisions set forth in 42 U.S.C. 415 of determining the primary insurance amount of a person receiving Social Security were amended in 1977 by Public Law 95-216; and

"Whereas that amendment resulted in disparate benefits according to when a person initially becomes eligible for benefits; and

"Whereas persons who were born during the years 1917 to 1926, inclusive, and who are commonly referred to as "notch babies," receive lower benefits than persons who were born before that time; and

"Whereas the payment of benefits under the Social Security System is not based on need or other considerations related to welfare, but on a program of insurance based on contributions by a person and his employer; and

"Whereas the discrimination between persons receiving benefits is totally inequitable and contrary to the principles of justice and fairness; and

"Whereas the Social Security Trust Fund has adequate reserves to eliminate this gross inequity; therefore, be it

"Resolved, by the House of Representatives of the eighty-seventh General Assembly of the State of Illinois, That Congress is hereby urged to enact legislation to eliminate inequities in the payment of Social Security benefits to persons based on the year in which they initially become eligible for benefits; and be it further

"*Resolved*, That a copy of this resolution be transmitted to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Illinois Congressional Delegation."

POM-167. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Governmental Affairs:

"HOUSE CONCURRENT RESOLUTION 183

"Whereas the freedom we enjoy as United States citizens is guarded by the men and women in the armed forces and should not be taken for granted; and

"Whereas in the recent history of our country we have been involved in conflicts which have required the deployment of the armed forces, and these conflicts have resulted in more than 88,000 American service personnel remaining prisoners of war or missing in action from World War II, the Korean War, and the Viet Nam Conflict; and

"Whereas the United States Foreign Relations Committee released an interim report that concluded that American service personnel were held in Southeast Asia after the end of the Viet Nam conflict; and

"Whereas on April 12, 1973, the United States Department of Defense publicly stated that there was 'no evidence' of live American POW's in Southeast Asia; and

"Whereas the public statement was given nine days after Pathet Lao leaders declared on April 3, 1973, that Laotian communist forces did, in fact, have live American prisoners of war in their control; and

"Whereas no POW's held by the Laotian government and military forces were ever released; and

"Whereas there have been more than 11,700 live sighting reports received by the Department of Defense since 1973 and, after detailed analysis, the Department of Defense admits there are a number of 'unresolved' and 'discrepancy' cases; and

"Whereas in October 1990, the United States Foreign Relations Committee released an 'Interim Report on the Southeast Asian POW/MIA Issue' that concluded that United States military and civilian personnel were held against their will in Southeast Asia, despite earlier public statements by the Department of Defense that there was 'no evidence' of live POW's, and that information available to the United States government does not rule out the probability that United States citizens are still being held in Southeast Asia; and

"Whereas the Senate interim report states that congressional inquiries into the POW/MIA issue have been hampered by information that was concealed from committee members, or was 'misinterpreted or manipulated' in government files; and

"Whereas the POW/MIA truth bill would direct the heads of the federal government agencies and departments to disclose information concerning the United States service personnel classified as priscners of war or missing in action from World War II, the Korean War, and the Viet Nam Conflict; and

"Whereas this bill would censor the sources and methods used to collect the live sighting reports, thus protecting national security; and

"Whereas the families of these missing service personnel need and deserve the opportunity to have access to the information concerning the status of their loved ones after these may years; Now therefore, be it

"*Resolved*, That the legislature of Louisiana does hereby memorialize the Congress of the United States to appoint a select committee to assist the United States Senate Foreign Relations Committee in obtaining information in government files, to begin immediate committee hearings to consider enacting the POW/MIA truth bill, and to continue funding of this investigation that is vital to resolving the POW/MIA issue in Southeast Asia; and be it further

"*Resolved*, That the legislature does provide that a copy of this Resolution be transmitted to the secertary of state, the president and secretary of the United States, the speaker and chief clerk of the United States House of Representatives, and each member of the Louisiana congressional delegation."

POM-168. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on the Judiciary:

"JOINT RESOLUTION

"Whereas the American flag is a symbol of national unity, provides a beacon of hope and liberty for every nation in the world, is a source of tremendous national pride and is cherished as the embodiment of our country's history, traditions and ideals; and

"Whereas our Armed Forces have defended our country's freedoms under the banner of the Stars and Stripes from the Revolutionary War to the present day; and

"Whereas the American flag is also a symbol of the fundamental framework of individual rights laid down in the Constitution and is a symbol of the political heritage of this most noble experiment, our nation; and

"Whereas this is the bicentennial year of the passage of the Bill of Rights and as the individual rights guaranteed by those amendments to our nation's Constitution constitute the very essence of our political heritage of liberty and freedom; and

"Whereas the Bill of Rights has stood unchanged since its adoption on December 15, 1791 and, as a result, has served as the unvarying bulwark that protects individual liberty in this country; and

"Whereas any change to the Bill of Rights may create a dangerous precedent and may open the door to incremental erosion of the basic rights enjoyed by all Americans; now, therefore, be it

"*Resolved*, That We, your Memorialists, respectfully recommend and urge the President and the Congress of the United States to take appropriate action to ensure that proper respect and treatment will always be accorded to the American flag and to ensure that desecration of our flag will be prevented while continuing our nation's long and proud history of preserving the integrity of the Bill of Rights to the Constitution of the United States; and be it further

"*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George H. W. Bush, President of the United States; the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States; and each Member of the Maine Congressional Delegation."

POM-169. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on the Judiciary:

"JOINT RESOLUTION

"Whereas this the bicentennial year of the passage of the Bill of Rights; and

"Whereas the fundamental framework of individual rights as laid down in the Bill of Rights constitutes the very essence of our political heritage of liberty and guarantees our freedom; and

"Whereas the Bill of Rights has stood unchanged since its adoption on December 15, 1791 and, as a result, has served as the unvarying bulwark that protects individual liberty in this country; and

"Whereas any amendment to the Constitution on any single issue of the moment that diminishes to any degree the Bill of Rights will create a dangerous precedent and may open the door to incremental erosion of the basic rights enjoyed by all Americans: Now, therefore, be it

"Resolved, That We, your Memorialists, respectfully recommend and urge the Congress of the United States to reject any proposed amendment that may now or in the future diminish the strength of the Bill of Rights; and be it further

"Resolved, That We urge the Congress of the United States to secure and preserve the Bill of Rights in its historic and current form; and be it further

"Resolved, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable George H. W. Bush, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. METZENBAUM:

S. 1436. A bill to amend section 21A of the Federal Home Loan Bank Act to extend the period applicable to single family property in the Affordable Housing Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH:

S. 1437. A bill to amend title 28 of the United States Code to preclude the application of sovereign immunity in certain circumstances where a foreign state has taken property in violation of international law outside its territory; to the Committee on the Judiciary.

By Mr. DASCHLE:

S. 1438. A bill to provide for international negotiations to seek increased equity in the sharing by foreign countries of the costs of maintaining military forces of the United States in such countries; to the Committee on Armed Services.

By Mr. JOHNSTON:

S. 1439. A bill to authorize and direct the Secretary of Interior to convey certain lands in Livingston Parish, Louisiana; to the Committee on Energy and Natural Resources.

By Mr. BRADLEY:

S. 1440. A bill to establish a National Scenic Coastal Area System; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOLE:

S. Res. 152. Resolution to make a minority party change in Committees; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METZENBAUM:

S. 1436. A bill to amend section 12A of the Federal Home Loan Bank Act to extend the period applicable to single family property in the Affordable Housing Program; to the Committee on Banking, Housing, and Urban Affairs.

EXTENSION OF PERIOD APPLICABLE TO SINGLE FAMILY HOUSING IN THE AFFORDABLE HOUSING PROGRAM

• Mr. METZENBAUM. Mr. President, I rise today to introduce legislation which should help make the American dream of home ownership a reality for more low-income Americans. This bill which amends the Financial Resource and Recovery Enforcement Act of 1989, is designed to assist low-income home buyers take full advantage of the special marketing period for single family homes in the affordable housing inventories of the Resolution Trust Corporation.

When FIRREA was passed, a 3-month marketing period was included to give low-income home buyers a window of opportunity to submit a bid on a home without having to compete with the savvy real estate speculators. Experience has shown that the marketing period is simply insufficient given all the steps required to prepare a home for sale, and the effort and time needed to submit a bid and complete a sale.

Congress gave the RTC the mandate to sell the office buildings, golf courses, condominums, and other assets that were once owned by failed savings and loans. We included provisions to create an affordable housing department to assist low-income home buyers in buying selected properties from the RTC's real estate inventory. It was one of the few opportunities that we had to salvage something worthwhile from the savings and loan debacle. It is no secret that the RTC did not want the responsibility of running the program. Their performance to date reflects this.

The program has fallen far short of its goals. Reports of abuse, excessive bureaucracy, properties ending up in the hands of overqualified buyers or speculators, and downright misrepresentations abound. Shrewd investor groups have taken advantage of the affordable housing program at the expense of those Americans who want to become homeowners. Once again we are hearing the sad and familiar tale of how a few savvy individuals have looted the Government for their personal gain.

The failures of the affordable housing program are not the result of a lack of interest from qualified low-income home buyers. The New York Times reported on June 26 that thousands of interested home buyers have qualified with RTC for consideration under the affordable housing program. Yet, we read how the time period for submitting a bid has expired on a greater number of homes than the RTC has actually sold within the marketing period. Given the RTC's inventory of single family homes, and the abounding interest from qualified buyers, we should either change the bureaucracy or give the home buyer more time.

Under the affordable housing program qualified low-income home buyers have the first right of refusal for up to 3 months on the sale of selected single family homes. The sale of these single family homes comprises a fraction of the total sales of assets that the RTC must make. According to RTC calculations, the income from the sale of these homes will only account for 1 percent of total income the RTC expects to receive from the sale of all assets. However, the RTC has made it every bit as complicated for a low-income home buyer to purchase a $30,000 house as it has for the sophisticated speculator to purchase a multimillion dollar complex.

In the sale of a single family home, the RTC must identify the property, clear the title, prepare the property for release to a clearing house, perform an appraisal, set a price, qualify buyers, perform an inspection, and market the property to low-income home buyers. For the potential home buyer, they must qualify for the program, find an eligible property, and perhaps most difficult of all, arrange financing. For those of us who have been fortunate enough to purchase a home, we are all too familiar with the delays and problems that frequently develop in buying a home, and yet, we expect the low-income home buyer to accomplish all of these tasks in a matter of weeks.

My bill extends the time period from 3 to 6 months so that any qualified buyer has sufficient time to purchase the home of his or her choosing. This extension of time available to submit a bid and complete a purchase will have the effect of maximizing the sales of affordable housing and will more effectively carry out the intentions of Congress. The extra time will also give the RTC affordable housing disposition program the necessary help to eliminate any abuses which have invaded the program. Most important, thousands of first time home buyers will have a reasonable opportunity of buying their own homes—a treasured achievement.

I ask unanimous consent that a recent series from the New York Times

and an article from the Wall Street Journal on this subject appear in the RECORD at this point.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 25, 1991]

RTC'S AFFORDABLE-HOUSING PLAN FALTERS

(By Todd Mason)

DALLAS.—State worker Trecia DeBaun was crestfallen in April when the Resolution Trust Corp. put out its list of affordable houses to be sold by sealed-bid auction just five days before the bids were due. With a job, two children and a daunting list of homes to inspect, she says, "it was an impossible deadline for a single parent."

So it goes with the RTC's affordable-housing program, the initiative that was supposed to make lemonade out of the nation's lemon thrifts by helping people in need of housing. So far, little of the lemonade has trickled down to the poor. Critics charge that the RTC largely ignored its obligations under the 1989 thrift reconstruction law until this spring and then geared up a headlong rush to clear out 80% of its inexpensive assets by June 30. In the stampede, they charge, many poor people have been trampled.

So far, sales have been strong in states like Florida and New Hampshire, where the RTC has small inventories and time to plan. As of April 30, sales contracts had been obtained on 5,679 homes, or 48% of the RTC's inventory then. But the agency is mainly reaping frustration in Texas, home to half of its inventory of modestly priced homes. In May, for example, the RTC offered 762 Texas homes but accepted bids on only half of them, due in part to late and sometimes inaccurate sales lists.

The agency's frenetic sales pace handicaps the working poor, who have little time to inspect houses and make decisions, and it presents an opportunity for speculators, complains John Henneberger, director of the Low-Income Housing Information Service in Austin, Texas. "It's been such a flop compared to its potential," he says.

The RTC, disputing Mr. Henneberger's conclusion, defends its hectic sales schedule. "These low-valued assets are very costly to maintain," says Dallas regional director Carmen J. Sullivan. "We're fundamentally tied to our goal of reducing costs to the taxpayer."

The conflict between housing the poor and minimizing taxpayer costs has dogged the affordable program ever since Congress slipped it into the 1989 thrift bailout bill. According to provisions of the law, low-income and moderate-income buyers and nonprofit groups have the exclusive right to buy RTC homes and condominium units priced at $67,500 or less for the first 90 days they are on the market. Trouble is, the standards used by the RTC to define an eligible buyer don't carve out much of an edge for low-income families.

The RTC, borrowing standards established by the Department of Housing and Urban Development, defines moderate income as 115% of median family income in a particular area. In Austin, Texas, for example, that amounts to $47,150 for a family of four. The agency defines low income as 80% of median income, or $32,800 in Austin, but offers no special breaks for those families. The median price of a home in Austin was only $85,000 in April.

Even with these generous guidelines, the RTC initially ignored its affordable-housing obligations, advocates charged in lawsuits filed in federal courts in Arizona and Texas this spring. Under its original sales rules, the RTC couldn't reduce prices for six months, meaning that the exclusive bidding period for low-income buyers expired before the agency could correct overly optimistic appraisals, which were legion. The suits also alleged that when RTC properties that originally exceeded the affordable-housing threshold of $67,500 were marked down below that level, those homes weren't set aside at all.

To settle the suits, the RTC promised to make amends, and geared up an ambitious sales campaign to tell potential buyers how the program worked. It also started recruiting nonprofit groups as technical advisers. "We needed experience to develop and change policies," says Stephen S. Allen, the program's director. "None of this could have happened on the day the law was signed."

Unfortunately, the RTC still can't provide Texas buyers with current and complete lists of homes for sale. When Ms. DeBaun, the buyer in Dallas, couldn't make sense of the RTC inventory and failed to interest a real estate broker in her search, she turned to Acorn, and advocacy group for the poor. But Acorn often loses its way in the bureaucratic thickets, too, admits Elizabeth A. Wolff, the group's regional director in Dallas. "We can't get the lists fast enough," she says. "It's a very frustrating enterprise." Meanwhile, Ms. DeBaum continues her search for a home.

While Ms. Sullivan concedes that RTC sales information isn't always accurate, she rests her defense on the results. She says that two-thirds of the successful bidders in the April and May Texas sales were low-income families as defined by the HUD/RTC standards. And buyers who aren't fast enough or confident enough to bid in the auctions can buy homes before—or after, if they remain unsold.

But there's hot competition in sealed-bid auctions for the choiciest properties, leaving homes of little value or appeal. (In a separate transaction, the RTC offered to give away 1,000 Texas homes to nonprofit groups but had found takers for only 400 of the hard-to-sell properties as of the June 5 deadline.)

The process has brought little but frustration to prospective buyers like Carmen Chavez-Lujan, a state worker in Austin who was prepared to bid $59,000 for an attractive suburban house with a swimming pool. A real estate broker told her the house was no longer for sale, she says. The RTC insisted it was. She was later told that the new owner had paid $33,000. She gave up on the program. "It just caused me a great deal of anger," she says.

"Investors are buying these properties still," charges Mr. Henneberger, the Austin housing advocate. He thinks that a few real estate brokers are steering the attractive properties to acquaintances or colleagues. He also believes that most brokers are turning away those buyers who could purchase homes only after a difficult search for financing. "We hear complaints of steering," says Ms. Sullivan, but she points again to the low-income profile of successful bidders.

The sales contracts, conditioned on obtaining mortgage loans, don't always turn into successful sales, though. Lenders in the Southwest are disqualifying low-income borrowers for even the slightest credit blemishes, says Gordon O. Packard, co-executive director of Primavera in Tucson. "It happens time and again," he says. "Each time, it's like kicking applicants in the stomach."

[From the New York Times, June 26, 1991]

FEW OF THE WORKING POOR GET HOUSES IN S&L RESCUE PLAN

(By Leslie Wayne)

AUSTIN, TX.—It's a tale of dreams gone awry.

When Congress created the Resolution Trust Corporation in 1989 to clean up the savings and loan mess, it decided to set aside thousands of foreclosed houses and apartments as low-cost housing for low-income people.

The notion was elegant in its simplicity: housing for the needy, thanks to the savings and loan crisis. The Government could provide decent shelter without spending a dime on new public housing. And the working poor, at long last, could own a home at a price they could pay.

It has not worked out like that. Virtually everyone agrees that the program has fallen short of its goals, though how far short is in dispute.

HARSH VIEWS EXPRESSED

"It's an unmitigated disaster," said Richard Jordan, a former board member of the Texas Housing Authority and a real estate investor. "The Government had the unprecedented opportunity to disperse people into single-family detached homes and it hasn't. Why? Because the program stinks."

Mr. Jordan is not alone in his view. Members of Congress and advocates of affordable housing say the Goverment has failed almost completely to exploit an important and rare opportunity.

Resolution Trust acknowledges that thus far only a small portion of the houses in the program have gone to the poor. But officials insist they have labored to devise policies to tackle an extremely difficult task, and they say that such a program cannot be established overnight. Stephen S. Allen, the corporation's head of affordable housing, said that under the circumstances "what we have accomplished has been remarkable."

WORKING POOR SHUT OUT

At any rate, thousands of inexpensive homes that could have gone to low-income buyers under the program have, in fact, been siphoned off and bought by investors. Middle-class buyers, who could otherwise afford housing, have been flocking to take advantage of bargain prices. And the working poor who could benefit the most from this program have been virtually shut out by, among other things, a lack of mortgages for them.

The program's critics contend that the Bush Administration, which fiercely opposed the program when it was initially set up by Congress, has actively tried to scuttle it through policies that discriminate against the poor.

Among them was a program that offered bigger discounts and better financing to sophisticated investors than to low-income buyers. Some of these policies have changed, housing advocates say, but the basic problems still exist.

"This has been a tremendous lost opportunity," said Frank H. Shafroth, director of Federal relations for the National League of Cities in Washington. "Something wonderful could have happened to a lot of families in America. But it didn't."

Representative Bruce F. Vento, a Minnesota Democrat who was chairman of a special Congressional task force on Resolution Trust, said he was disappointed. "The Administration and the R.T.C. had to be dragged kicking and screaming into the affordable-housing program," he said. "They have a basic reluctance to implement the law."

Mr. Allen of Resolution Trust said the expectations of the critics were unrealistic. "You can't help lower-income people buy when you have a mandate to return the maximum dollars to the Government," he said, "and it's a conflict. So it's an ongoing challenge for us to reach our target market."

THE PROGRAM: SOCIAL POLICY VS. TOP DOLLAR

To carry out the program, Resolution Trust has hired an impressive array of bureaucrats with a long history of service to the poor. But they find themselves caught between the agency's conflicting goals: Selling real estate at top dollar to reduce the cost of the savings and loan bailout for all taxpayers, and selling small houses at affordable prices. The agency is working at the juncture of social policy and quick real estate sales, and money talks.

Under the program as set up by Congress, a 90-day window was created in which low-income buyers and nonprofit organizations have the exclusive chance to buy Resolution Trust properties appraised at less than $67,500. If there are no takers, the houses are offered on the open market.

As of the end of April, 17,372 houses and 489 apartment complexes with 65,097 individual apartments have fallen within these guidelines. This represents $1.6 billion in real estate, or 10 percent of Resolution Trust's entire portfolio. And more housing will be added as the agency continues to take over insolvent savings and loans.

Besides social policy, there are strong economic incentives behind the affordable housing program. The Government estimates that it costs $18.25 a day, or about $6,600 a year, to carry a foreclosed house. At the same time, new public housing costs anywhere from $60,000 to $100,000 a unit.

In one fell swoop, the Government could lop off hundreds of millions of dollars in real estate carrying costs and provide new public housing on the cheap.

"If you believe the Government should intervene to help low and moderate families, this should be the way," said Representative Barney Frank, a Massachusetts Democrat and advocate of the program. "It's the lowest per-unit cost to the Government."

But sales so far have been agonizingly slow. Only 2,500 houses had been sold by May 1 and, by the end of that month, 13 apartment buildings had been sold. Critics contend that few of the houses have actually gone to low-income people.

At the same time, 3,300 houses and 174 apartment complexes have passed through the 90-day window unsold. In Texas, where nearly half the affordable properties are, brokers say many of these have since been snapped up by investors eager to take advantage of the prices, which for houses taken as part of savings and loans failures are substantially lower than those on the general real estate market.

And an additional 3,998 houses appraised at less than $67,500 never even got into the program and were sold to other buyers because of a rule, only recently changed, that excluded houses of savings and loans associations the Government had declared insolvent but had not yet seized. These houses instead were offered by the Government on the open market.

TRYING TO QUALIFY: MOST REFUSED AS CREDIT RISKS

Such numbers take on real meaning for DeeDee Cyphers, a single mother of three in Austin who is stretching to make ends meet on the $19,000 she earns as a senior accounting clerk for Travis County.

Ms. Cyphers is one of the people the program is intended to benefit. But, as with many like her, it has failed to reach her. "It's like the American dream is not coming true for the working poor, she said.

One day, a fellow employee showed Ms. Cyphers a flier for the Resolution Trust program. Intrigued, she got a list of properties and, with a broker, found a $26,000 house in a neighborhood she fell in love with. Her offer was accepted and a "sold" sign sprouted by the house. At night, she would drive by just to look. "It wasn't a mansion but it was cute," she said, "a nice place to raise my kids that wasn't trashed with drugs."

Even more attractive to her was the monthly mortgage payment of $308, significantly less than the $425 she struggles to pay in rent.

THE BANK SAYS NO

But Ms. Cyphers got turned down at the bank. This happened even though she had the down payment, had held the same job for five years and was applying under a special program of the Texas Housing Authority, which issued bonds specifically to provide mortgage money in local banks for low-income buyers of agency properties.

But the bank, in this case Guaranty Federal Savings, and not the housing authority makes the final credit decision. And the bank did not like the fact that seven years ago, when Ms. Cyphers and her former husband were laid off, they returned a leased car to a dealer who wanted the payments instead of the car. The dealer obtained a judgment against her.

For Ms. Cyphers, this disappointment turned into "heartbreak," in her words, when she learned recently that Resolution Trust was planning to give away to nonprofit agencies up to 3,000 houses it said it could not sell. Some of these are in bad shape but can certainly be fixed up.

"The R.T.C. is trying to give away houses and here I want to pay for one," she said. "I think they should try to help the working poor who are trying to get back on their feet. The houses are supposed to be affordable—to help the people out. If I were rich, I wouldn't need the R.T.C."

OVERSIGHT: CRITICS SAY BOARD HAMPERED PROGRAM

Much of the program's poor showing has been attributed by critics to restrictions in the initial law and to implementation policies of Resolution Trust's Oversight Board, whose members include Alan Greenspan, chairman of the Federal Reserve, and Jack F. Kemp, Housing and Urban Development Secretary.

The board allowed the agency to make big discounts in all properties except those in the affordable-housing program until just three months ago when Congress halted the practice by threatening to withhold the agency's funds. The effect was that people were buying houses outside the program cheaper than the poor could get them within the program during the 90-day period.

And seller financing has been offered by the agency to buyers of all other properties—except in the affordable-housing program, where Resolution Trust two years later is beginning to develop a limited program of financing for low-income buyers.

"There was just an ideological objection to helping poor people," Representative Frank said. The Bush Administration, he charged, "felt that poor people were a pain and they don't need them."

Not so, say members of the Administration and the Oversight Board. "We've been proactive in affordable housing," said Peter H. Monroe, president of the board. "In terms of the dollars the R.T.C. will collect from real estate, maybe 1 percent will come from residential affordable real estate."

Alfred A. DelliBovi, Under Secretary for Housing and Urban Development, said, "I can assure you there has been no foot-dragging by the Administration to carry out this law."

Critics acknowledge that some of the flaws in the program have been corrected but say the low-income citizens who were to have been given preference are still for the most part missing out.

THE TEXAS EXPERIENCE: FEW OF THE POOR GET HOUSES

Nowhere are the problems of the program more apparent than in Texas, where real estate prices have fallen so drastically that nearly every house that falls into the agency's hands meets the affordable-housing guidelines. And, nearly half of all affordable houses to be sold by the agency are in Texas, where the Texas Housing Authority estimates that 60,000 people are homeless. In Dallas, there is a two-year waiting list for public housing.

Potential buyers and nonprofit organizations said in interview that accurate information on what houses were available had been almost impossible to get. The bidding process is described as a nightmare of paperwork that discourages real estate brokers from even showing properties.

Before putting down a $500 earnest-money deposit on a house in the program, a prospective buyer must fill out a 25-page form. Until recently, the agency's real estate contract was 45 pages long instead of the standard 3 pages. "I've sold commercial property for the R.T.C. and that was a pain in the neck," a Houston broker said. "But it's nothing like the affordable-housing program. It's more of a headache than it's worth."

MORTGAGES HARD TO GET

More important, mortgage financing for low-income people has been hard to come by, despite the housing authority's bond issue, which raised $142 million to fund 8.35 percent mortgages through banks that would lend to low-income buyers of Resolution Trust houses.

So far, only 384 such loans have been made, leaving the agency with $122.5 million in unused mortgages. This comes despite a telephone hotline that has been getting nearly 800 calls a day, newspaper and radio ads and a mailing to more than 14,000 homes.

"The consumer is tearing down our door," said Richard H. Garza, former acting executive director of the authority. "Every time we put out a news release our telephone lines go haywire."

Much of the problem is that low-income people are not perceived as good credit risks. "If a low-income buyer has anything shaky on his credit record, he gets tossed out," said Elizabeth Wolff, head of the Dallas office of the Association of Community Organizations for Reform Now, or Acorn, a nonprofit agency. "Only the squeaky clean can qualify."

Clearly, mortgages for low-income groups have been a big part of the problem. Resolution Trust was authorized by Congress to help provide such financing but so far has done little. The banks, for their part, have been quick to turn down low-income applicants on the grounds that they present greater risk than others.

But housing advocates argue that lending to big investors is often chancier, as illustrated by the savings and loan crisis. At any

rate, if the housing program is to work, the processing of getting mortgages will have to be made easier for those with low incomes.

"I was naive to think that this program could work for the low income," said Skip Beaird, executive director of the Housing Resources Association, a nonprofit Austin agency. "We get 60 calls a day from people excited that there might be something for them. But there isn't."

Each Wednesday night, Mr. Beaird and an assistant, MaryLee Claborn, sit in a conference room at the Travis County Human Services Building painstakingly counseling low-income people on where to get a Resolution Trust property list, how to find a broker and where to apply for a mortgage.

But they can recall only 3 people ever getting a house of the 1,000 or so they have counseled or conversed with on housing issues.

"The R.T.C. has a brochure that says, 'If you're paying $250 a month or more in rent, the R.T.C. wants to help you own your home,'" Ms. Claborn said. "And every time I see that, I get angry, it's so misleading."

SPECULATION: HAWAIIAN INVESTORS FIND TEXAS DEALS

The Resolution Trust office in Dallas is in a gleaming high-rise in an exclusive neighborhood, where Jane Keefe, head of the agency's Southwestern Regional Affordable Housing Office, oversees the program. Through the program, she said, 1,134 Texas houses have been sold at an average price of $41,000.

About half these sales, she said, were to people below 80 percent median income, or under $35,000 a year for a family of four. "For us to have half our sales to the really low-income families, I'd say we're successful," she said.

But housing advocates question just how successful Resolution Trust is, even by its own tally. And they are raising some serious questions about who exactly is buying the homes.

Through the Freedom of Information Act, John J. Henneberger, director of the Texas Low Income Housing Information Service, a nonprofit corporation, obtained lists of houses that the agency said it sold in Texas under the program.

By comparing the Resolution Trust lists with courthouse deeds, Mr. Henneberger said he found that many of the properties the agency said it sold were never sold at all. Other properties, he said, were purchased by investment groups from as far away as Hawaii and many were bought for cash—in amounts up to $30,000. Many of these properties had passed through the 90-day window and were sold to investors.

Mr. Henneberger and other housing advocates suspect that brokers are lying low until after the 90-day period and then pushing these properties to buyers with ready cash.

In Austin, for instance, Mr. Henneberger's spot check turned up condominiums with initial appraisals as high as $95,000 being sold to Hawaiian investors at prices in the $20,000 to $30,000 range. These were then listed as affordable-housing sales.

Mr. Henneberger said many questions were raised by the data: How did condos with high appraisals get into the program in the first place?

"What's emerging is a lot of confusion," Mr. Henneberger said. "I'm increasingly convinced the R.T.C. doesn't know what sold under the program. So how can they continue to turn out reports to Congress, if they don't know?"

Ms. Keefe said the lists might have bookkeeping errors and she denied that houses were slipping with any frequency into the hands of well-off investors during the 90-day period.

But houses have slipped through.

Recently, Resolution Trust agreed to sell 36 Texas homes in the affordable-housing program to a Houston real estate broker who had formed a charity—the Lung Transplant Foundation Inc.—jnst a day before he submitted his bid. The houses were being sold to the broker for $500 each and his son was to have collected a $500 commission on each sale—or some $18,000 in all. But after an article about the transactions appeared on June 6 in The San Antonio Light, the agency canceled the sale.

A sizable number of the Texas sales have been all-cash sales—some 20 percent, according to the agency's Dallas office. The agency said low-income people were often suspicious of banks and kept their money at home or tapped relatives to help. Deborah Kroupa, a housing specialist with Acorn, the agency in Dallas, disputed this. Low-income people, she said, rarely have more than $1,000 or $2,000 in "mattress money."

Ms. Kroupa said the money came from speculators who could get a friend or a relative to qualify for the program, buy the property and pay cash so there was no paperwork. Several months later, the bnyer moves out, the house is refinanced at a bank and is converted into valuable rental property. With the cash pulled out, the investor can buy again.

Ms. Kroupa should know. She said this was work she once did herself as a real estate buyer but stopped because she said her conscience bothered her. "It's a legal loophole."

Senator Howard M. Metzenbaum, Democrat of Ohio, said he would introduce a measure in Congress to extend the 90-day window to 180 days. Nearly all nonprofit agencies would like to see the trust corporation streamline its marketing and sales process as well as begin to offer seller financing and greater price discounts to low-income families.

And some individuals and organizations, Acorn, for instance, have started to work with private banks to broaden credit standards to make more low-income persons eligible for mortgages.

As Mr. Jordan, the Austin developer, put it, "It should be as easy for a low-income person to buy a house as it is for a low-income person to buy a car."

[From the New York Times, June 27, 1991]

HOUSING EARMARKED FOR THE POOR IS ENRICHING BIG INVESTORS INSTEAD

(By Leslie Wayne)

DALLAS.—A Federal program of housing for the poor is turning into profits for big real estate investors, led by one of America's business giants, the General Electric Company.

General Electric is about to become the biggest buyer under a Federal program in which nearly 500 apartment complexes taken over from failed savings and loan institutions are being sold by the Resolntion Trust Corporation at discount prices to investors who agree to set aside 35 percent of the units for low-income families.

In real estate circles, all eyes are drawn to the G.E. deal. The company's financial and investment arm, the General Electric Capital Corporation, has agreed to buy 28 complexes with a total of 5,959 units in four Texas cities and six cities outside Texas—at a price estimated at nearly 50 percent of market value.

MANDATED BY CONGRESS

Such discounts are meant to encourage sales of apartment complexes with limited rent controls under an affordable-housing program, mandated by Congress two years ago, to provide apartments and houses at prices the working poor can afford and without requiring the Government to pay for public housing.

In fact, in the portion of the program involving single-family homes, relatively few residences appear to have gone to the poor. But in the separate apartment program, a further complication emerges. Big investors, inclnding General Electric, have figured out ways to obtain whole complexes and make hefty profits by adhering to the letter, if not the spirit, of the new law.

Critics contend that the Government is selling far more of its apartment complexes to for-profit investors than to nonprofit organizations whose primary mission is to help provide proper housing for the poor.

Moreover, they say, a plan by General Electric and other large buyers to lump the low-income units together and segregate them from the rest will inevitably create slums of the future.

Resolntion Trust denies it is discriminating against lower-income gronps in the apartment sales but it also says it has a dnty to realize as mnch money within the bounds of the law as possible to minimize the costs of the savings and loan bailout.

The General Electric purchase, seen by investors as the model for future deals with Resolntion Trust, is part of the first major package of apartments pnt ont for bid under the agency's affordable-housing program. The package has 193 Texas apartment complexes, built originally by private developers and foreclosed on by the Government.

GOING TO LARGE BUYERS

Of that batch, more than 100 received no bids, and the largest number of the rest are being sold in bulk to large buyers, whom the trust corporation declines to identify. A number of other complexes, some too small to attract big investors, are being purchased by nonprofit agencies.

With a cost estimated at $75 million, the General Electric deal is the largest real estate transaction negotiated by the trust corporation not only in the affordable-housing program, bnt in sales of all property taken over in the savings and loan crisis. It exceeds the $65 million sale in March of a Palm Springs hotel to a gronp of Japanese investors and the $44 million sale of the Centrust building in Miami last month.

By agreeing to set aside apartments for low-income tenants and by buying in bulk, General Electric gets 40 to 50 percent taken off the purchase price—a far steeper discount than General Electric would have received if it had bonght the same complexes outside the trust corporation's affordable-housing program. This discount reduces the amount the Government will get back to trim the costs of the savings and loan bailout.

THE CRITICS: SEGREGATING THE POOR

Advocates of low-income housing contend that the General Electric arrangement is not socially sound or, in the long run, economically beneficial to the taxpayer.

They say the company's plan to segregate—"aggregate" in real estate parlance—poor residents into a few of the complexes miles away from the others runs counter to the policy goal of mixing low-income families with other income levels in the same complexes to provide what is regarded as a generally healthier community mix.

"The big players are making some great real estate deals, and in five years what they will have done for affordable housing is zilch," said James Ervin, a consultant to the Volunteers of America, one of the nation's largest nonprofit corporations. "This loophole allows private developers to sneak to the front of the line, pull out the cream properties, throw the rest back and create new slums."

Charles B. Gough, a consultant to the Dallas Housing Authority, said: "I don't believe aggregating affordable-housing tenants is the intent of the law."

G.E. DEFENDS PROPOSAL

General Electric and the trust corporation disagree, contending the plan is both necessary and legal. Brown Thurman, a G.E. special projects manager who represented the company in the transaction, said: "The R.T.C. needs to have flexibility, or I won't bid. I will provide housing for the low income, but don't tie my hands. We're here to make a profit. If you restrict me as to what I can do and cannot do. I may or may not want to play."

Stephen S. Allen, head of the trust corporation's affordable-housing program, agreed on the importance of flexibility and aggregation.

"Aggregation," he said, "is permitted in the law. We'll be at this forever if we sell assets one by one. Our goal is to get a range of services to sell in bulk."

Yet the law permits only the big buyers to "aggregate." Buyers of just one apartment complex are specifically required to scatter low-income tenants throughout all buildings in that complex and not relegate them to a single building. The ability to aggregate was specifically put into the law to entice large private investors to buy properties in bulk to help move Resolution Trust's assets quickly, Mr. Allen said.

Based on the numbers, Texas real estate experts said General Electric could expect an annual operating return of 13 to 15 percent under current market conditions—a return regarded as excellent in the current market.

This compares with the return of 8 percent to 10 percent investors are receiving on similar apartment complexes bought without the large discount. Should rents rise, G.E. could earn as much as 15 to 18 percent.

Under aggregation, a buyer can quickly sell the complexes unencumbered by rent controls to another buyer for an immediate profit. In G.E.'s case, the company may further reduce its commitment to low-income housing and improve its return through a plan to sell the rent-controlled complexes to a nonprofit agency, which is trying to raise about $27.6 million to buy the units from G.E.

One of the reasons General Electric is able to bid on this deal is that it is a sophisticated, well-capitalized company with deep pockets. Resolution Trust is providing seller financing for many of its commercial properties but so far little in the affordable-housing program. In the Texas package, it accepted only all-cash Texas package, it accepted only all-cash offers. The net effect, according to Mr. Thurman of G.E., is that "only those with money can play."

OBSTACLES: TOUGH GOING FOR AGENCIES

Though Resolution Trust says it is working to improve the program, the nonprofit groups say that doing business with it has thus far been tough going, indeed. Of the few nonprofit groups that have managed to buy in, many have found that the agency has driven such hard financial bargains that they cannot fill their units with the extremely poor, as they would like, and still cover their debts.

"You can't house the homeless and pay a mortgage," said Louis Kurtz, housing development director at the Austin-Travis County Mental Health Center, which has purchased two small properties. "If the R.T.C. were committed to housing the homeless, that would be reflected in the purchase price."

Mr. Gough, the consultant, is currently bidding on a 280-unit complex and a 296-unit complex for the Dallas Housing Authority. He said he would like to fill his units with more than 35 percent low-income people, which he would not aggregate, but cannot unless some Government agency provides rent subsidies. No such money is currently available.

He estimates that it will cost $250 to $275 a month to cover the operating costs on each of his units. That is nearly $200 a month more than the average rent paid by tenants in Dallas public housing. "There is no way that I can fill 20 percent of the complex with very-low-income tenants," Mr. Gough said.

50 TRIES, NO DEALS

One agency that has had a particularly difficult time is the Volunteers of America, the nation's 22d-largest charity, founded nearly a century ago to provide housing to the poor. After two years of trying to buy some 50 trust corporation properties, it has been unable to close a single deal.

The organization says it has had financing problems and, in many cases when it finally learned what properties were available, the properties were no longer in the program for some reason—or were not yet available for sale.

"We see this as a large opportunity to take care of housing for a large number of people," said Mr. Ervin, the Volunteers consultant. "But we've got limited resources."

Volunteers has tried to persuade the R.T.C. to help provide financing to buyers in the affordable-housing program by submitting a bid one some properties in the Texas package but with a second mortgage provided by the R.T.C.

The organization reasoned that the law required the trust corporation to provide financing to nonprofit buyers. But Resolution Trust turned down the bid.

"Affordable housing is the law," Mr. Ervin said. "It's a commitment from Congress and there should be an emphasis on making sure that what is the intention of the law occurs, and that's not happening. The R.T.C.'s job is to create affordable housing, not to find ways not to allow it."

FINANCING: PROGRAM PLANNED TO AID AGENCIES

Resolution Trust says it is working with the Federal National Mortgage Association to develop a financing program that will help the nonprofit groups. Resolution Trust's Oversight Board has now adopted a policy allowing the agency to offer financing to nonprofit agencies with as little as a 5 percent down payment.

Still, although financing is important, the nonprofit groups said it could not alone solve all their problems with Resolution Trust.

Mr. Kurtz of the Travis County Mental Health Department has $2.5 million in foundation grants to buy apartment complexes for his clientele—whose average income is about 17 percent of the area's median, or about $400 a month. The department has purchased 129 individual Austin apartments in eight locations on the open market.

But the Mental Health Department has also purchased one 20-unit apartment complex for $192,000 from Resolution Trust and has bid $320,000 for a 26-unit Austin complex. In the first case, Mr. Kurtz bid 85 percent of the agency's asking price, in the second one, 87 percent, hardly great discounts in his opinion.

Mr. Kurtz said he was not prepared for just how slow and confusing the process of buying would be. When he tried to submit a letter of intent to make a bid, the trust corporation asked him to get a resolution from his board authorizing him to look at the property.

Another resolution was needed to authorize him to bid. Another was needed to prove the agency was nonprofit. After Mr. Kurtz tried to submit the bid, he said he had to register with the trust corporation in order to do so. Then, after he thought he had a contract, the agency lost his down-payment check. A file clerk eventually found it.

To get information on other properties in the area, Mr. Kurtz said he had to know the name of the failed savings and loan that had owned the property.

Once his first bid was submitted, he said no one at the trust corporation could tell him whether it was accepted. And when he wanted to buy a second property, Mr. Kurtz could not resubmit some of the identical documents from the first time, but had to start all over again.

"It's driving me crazy," he said.

Nor, in Mr. Kurtz's opinion, did he get any break on price for his troubles. And, after bidding on the two properties, he saw an ad placed by Resolution Trust in The New York Times for a property next door to one he was buying that was better designed for his mentally ill tenants.

When he called the broker, he found that the property had already passed through the 90-day window during which properties are set aside exclusively for buyers agreeing to the affordable-housing restrictions and that some 10 investors had already put in bids.

Mr. Allen of Resolution Trust said things are getting better. "I don't think our procedure is bureaucratic or has a lot of red tape," he said, "and we are looking at ways the process can be improved."

But Mr. Kurtz remains skeptical. "I go to homeless conferences, and I see the faces of R.T.C. people there," Mr. Kurtz said, "But the R.T.C. is doing nothing to house the homeless."

[From the New York Times, June 27, 1991]

G.E. SEEKS TO SELL TO AGENCY BUILDINGS SET ASIDE FOR POOR

The General Electric Company has negotiated what critics say will be a highly profitable deal with the Government by taking advantage of a housing program intended to help the poor.

The company is now trying to reduce its initial costs even further. It is seeking $26.6 million in financing for a nonprofit agency it has selected as a business partner.

The partner would buy 12 apartment complexes from General Electric that G.E. has agreed to buy from the Government. These units would be set aside in a segregated area designed for low-income tenants.

That agreement is part of G.E.'s overall package in which the company gets 28 apartment complexes at a price said to be substantially below market value.

The nonprofit agency is the National Center for Housing Management, an organization in Washington that trains personnel to run low-income housing but which has little experience in managing such housing. An intermediary, the Salisbury Capital Corporation of New York, has approached the Texas

Housing Authority to issue $27.6 million in tax-exempt bonds to finance the deal.

The housing authority is cool to the idea. Sources in the authority cite the nonprofit agency's lack of direct experience. The authority is also said to suspect that Salisbury has overestimated the revenue to be earned and believes the plan is really intended to shift General Electric's risk on the low-income properties to the authority and bondholders.

No one at Salisbury, the National Center or G.E. would comment.●

By Mr. DASCHLE:

S. 1438. A bill to provide for international negotiations to seek increased equity in the sharing by foreign countries of the costs of maintaining military forces of the United States in such countries; to the Committee on Armed Services.

DEFENSE BURDEN SHARING

Mr. DASCHLE. Mr. President, this afternoon I am introducing legislation that asks America's military allies to share in the cost of their own defense.

This bill is similar to an amendment authored by my friend, Congressman BYRON DORGAN, and adopted by the House of Representatives in May. It asks three things: First, that the President negotiate cost-sharing agreements with our military allies to offset American tax dollars spent for their defense; second, that a fund be established into which other nations may contribute if the President is able to negotiate burden-sharing agreements with them; and third, that the administration provide Congress with an accounting of allied contributions—whether in cash or in kind—to that fund.

That is all, Mr. President. We simply want our allies to pay their fair share of our mutual defense costs; we want the President to initiate negotiations designed to achieve a more equitable distribution of those costs; and we want a clear accounting of allied contributions to this effort. This legislation says only that, 40 years after America rebuilt Europe, at a time when Japan and the European Economic Community is prospering and American workers and their Government are sorely pressed, the nations we have defended, and continue to defend, should be asked to contribute more to their own defense.

This bill does not target specific countries or amounts. It simply gives the President the authority and, frankly, the motivation to move forward and negotiate agreements to provide for the defense of those nations in a more realistic and equitable manner.

Throughout the 20th century, the United States has demonstrated its willingness to assert a leadership role in the world in defense of liberty and democratic principles. In turn, our allies have enjoyed the security of the U.S. defense umbrella. While this arrangement has served the interest of freedom and democracy well, the changing international environment dictates a fundamental reassessment of the nature of our Nation's defense relationships with our allies.

We have 395 bases in 35 different countries. We spend $28 billion a year overseas in direct costs for the defense of our allies. And, the indirect cost of that defense has been estimated at well over $100 billion.

The European members of NATO collectively have a gross national product greater than that of the United States. Despite that economic power, which will undoubtedly grow after the European Community is formally united in 1992, the people of the United States continue to spend more on NATO defenses than the other 15 alliance members combined.

Is that fair?

During Operation Desert Shield/Desert Storm, President Bush and Secretary Baker asked a similar question. Is it fair for the United States to take on the burden all on our own? And with unanimity within and without the administration, in this Congress, we said no; if we are going to commit ourselves to activity within the Persian Gulf it must be a shared responsibility. So too now, Mr. President, we must ask our allies for that shared responsibility.

During Operation Desert Shield/Desert Storm, President Bush and Secretary Baker skillfully constructed an alliance that included not only joint forces and a unified command, but also payments from the members of that alliance to a mutual defense cooperative fund that was used to prosecute the gulf war. The cooperation achieved during the gulf war has shown us that burden sharing can work. It is time to establish a more formal mechanism to promote such burden sharing arrangements in other parts of the world as well. Without such a mechanism, burden sharing will remain more rhetoric than reality.

To continue to grow and prosper, our alliances must recognize the changing international environment and the mutual burden that a regional defense pact should entail. The United States can no longer afford to defend the world alone. We have borne that burden far longer than any people should. It has cost us dearly, and frankly, it is not fair.

America will never shirk its international responsibilities. We believe too strongly in freedom and in peace. But America must now ask those to whom we have given so freely for so long to begin to share in the responsibility.

That is all this legislation seeks. It prepares us for a more equal partnership with our allies and a better understanding of the level of commitment that friends have toward each other. It is the least we can ask from our allies and for the American taxpayer.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1438

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFENSE OFFSET PAYMENTS.

(a) DEFENSE COST-SHARING AGREEMENTS.—The President shall consult with foreign nations to seek to achieve, within six months after the date of the enactment of this Act, an agreement on proportionate defense cost-sharing with each foreign nation with which the United States has a bilateral or multilateral defense agreement. Each such defense cost-sharing agreement should provide that such nation agrees to share equitably with the United States, through cash compensation or in-kind contributions, or a combination thereof, the costs to the United States of maintaining military personnel or equipment in that nation or otherwise providing for the defense of that nation.

(b) CONSULTATIONS.—In the consultations conducted under subsection (a), the President should make maximum feasible use of the Department of Defense and of the post of Ambassador at Large created by section 8125(c) of the Department of Defeuse Appropriations Act, 1989 (10 U.S.C. 113 note).

(c) ALLIES MUTUAL DEFENSE PAYMENTS ACCOUNTING.—The Secretary of Defense shall maintain an accounting for defense cost-sharing under each agreement entered into with a foreign nation pursuant to subsection (a). Such accounting shall show for such nation—

(1) the amount of cost-sharing contributions agreed to;

(2) the amount of cost-sharing contributions delivered to date;

(3) the amount of additional contributions of such nation to any commonly funded multilateral programs providing for United States participation in the common defense;

(4) the amount of contributions made by the United States to any such commonly funded multilateral programs;

(5) the amount of the contributions of all other nations to any such commonly funded multilateral programs; and

(6) the cost to the United States of maintaining military personnel or equipment in that nation or otherwise providing for the defense of that nation.

(d) REPORTING REQUIREMENTS.—(1) Not later than 180 days after the date of the enactment of this Act, and each 180 days thereafter, the President shall submit a report, in classified and unclassified form, to the appropriate committees of the Congress concerning efforts and progress in carrying out the provisions of subsections (a) and (b).

(2) Not later than 180 days after the date of the enactment of this Act, and each 180 days thereafter, the Secretary of Defense shall submit to the appropriate committees of the Congress a report containing the accounting of defense cost-sharing contributions maintained pursuant to subsection (c).

By Mr. JOHNSTON:

S. 1439. A bill to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, LA; to the Committee on Energy and Natural Resources.

LIVINGSTON PARISH LAND EXCHANGE

● Mr. JOHNSTON. Mr. President, today, I join my distinguished colleague Representative RICHARD BAKER,

Baton Rouge, in sponsoring legislation to aid a group of Livingston Parish residents in a long running dispute with the Federal Government over the legal ownership of the residents property.

The dispute involves a 640 acre tract of land which has been occupied as private property since prior to the Louisiana Purchase nearly 200 years ago.

The U.S. Interior Department's Bureau of Land Management has maintained that because no records exist transferring title to the land to private ownership at the time of the Louisiana Purchase, the area technically remains the property of the Federal Government.

Citing possible Federal mineral interests in the tract, the agency has blocked efforts by land holders to obtain patents that would establish legal ownership of the property.

The legislation introduced today would direct the Department of the Interior to formally convey the property to the occupants, while allowing the Department to retain mineral rights.

The failure of the Federal Government to acknowledge the private ownership of this land has caused tremendous and unnecessary legal burdens for the families who are affected. It is simply not fair these citizens continue to be haunted by some technical oversight that may have occurred some 200 years ago.

As chairman of the Senate Committee on Energy and Natural Resources I am committed to enactment of this measure this year. I strongly urge your support.●

By Mr. BRADLEY:

S. 1440. A bill to establish a National Scenic Coastal Area System; to the Committee on Commerce, Science, and Transportation.

NATIONAL SCENIC COASTAL AREA SYSTEM ACT

● Mr. BRADLEY. Mr. President, I rise today to introduce the National Scenic Coastal Area System Act. This legislation is designed to help coastal towns to plan for a future that preserves the unique features of their environment. This bill will provide a way by which scenic coastal areas can be managed as living landscapes where private ownership, existing communities, and established land uses can be maintained, even as outstanding public values are protected.

Mr. President, for the past three or four years, we have had underway in New Jersey "National Wild and Scenic River" studies—for the Great Egg River on the Atlantic coast and the Maurice, Manumuskin, and Menantico Rivers off the Delaware Bay.

In both cases, local communities came to the Congress asking for help. We passed a law and asked the National Park Service to assist local planners in studying these areas. The efforts allowed local communities to organize, with Federal help, and to begin the process of identifying and protecting unique river resources.

In one case, the Great Egg, the local communities have more or less coalesced and developed a comprehensive management plan. In the other case, there has been less harmony. But in both cases, the process itself has focused the debate on the ecological and cultural values of the rivers and their futures. The Wild and Scenic River program brought local communities together to debate and decide their own futures.

Mr. President, unique coastal communities should have some of the same opportunities. Often, in any growing town or area, there are natural and cultural values at risk. If there is an interest at the local level in protection or preservation, we should be able to lend a helping hand. The legislation that I am introducing today, the National Scenic Coastal Area System bill, would offer an outstretched hand. When you live in a coastal area, you are the most aware of special qualities—unique scenic vistas, a pattern of development that was sensitive to the ocean environment unique natural habitat, an historic quality, and so forth. And in most cases, the protection of these special qualities will depend on the local citizens. For these communities, this bill would:

First, give local citizens a goal to shoot for—designation as a National Scenic Coastal Area;

Second, give them Federal assistance for planning or management;

Third, assist them in the actual protection of the land; for example, the bill encourages the development of locally controlled land trusts which could acquire critical lands or easements by purchase from willing sellers or donations;

Fourth, pledge the Federal Government to live by an approved management plan; for example, there would be no Federal assistance for roads, dredging, or dredge spoil disposal that was incompatible with the local plan; and

Fifth, recognize the area as a National Scenic Coastal Area.

What communities would be able to apply for this assistance? The bill provides for the Secretary of the Interior to establish guidelines which will lay out the specifics of who can quality and how to apply for assistance. However, it is my intention to encourage the broadest participation. My legislation does not target only undeveloped windswept ocean beaches. It is not a replacement for wildlife refuges or state parks or national seashores. Rather, it is a complement to these programs.

My bill will use a broad brush. For instance, I hope this legislation to reach out to coastal communities in the Delaware Bay that have developed amongst the beautiful and spectacularly productive salt water marshes. Places like Reeds Beach and Pierces Point are surrounded by critical wetlands. Another example of what should be included is that classic expression of family recreation—the boardwalk—which represents another important ocean scene. In a community like Ocean City, NJ, where generations have strolled the wooden boardwalk at dawn or dusk, there is a living metaphor for family values and American history. How does a community preserve boardwalk scenery and the village atmosphere? These towns are under enormous pressure to increase density, put up the highrises, raze the older houses to make way for the new. We are not going to stop growth but, perhaps, we can ensure that such growth does not compromise the unique scenic values that attract us in the first place.

Mr. President, consider an island on the New Jersey shore called Long Beach Island. It is a beautiful stretch of Atlantic seashore. A recently completed Army Corps dredging project has left many local citizens concerned about side effects that might be destroying their beaches. A large jetty, the citizens maintain, is stopping the normal flow of sand down the coast. The outcome that they see is a shrinking barrier island. Under my legislation, this island could potentially become a national scenic coastal area. If so, this Federal project could not go forward unless it was reviewed and found compatible with plans to protect the island. Right now, the citizens know only that the project is complete and their beach is shrinking. No one has proved cause and effect. But, clearly, the best time to raise these issues and resolve them is before the project is underway. When our most fragile ocean areas are at risk, and already protected by the communities themselves, my legislation will force the Federal Government to have the same level or concern and caution. It is not just the caricature of a greedy developer that can destroy a coast line. The Federal Government, perhaps inadvertently, can do the same.

I emphasize for my colleagues that his is not a Federal Government—strong arm bill. There is no Federal condemnation authority. It is not a no growth plan, either, although it might shift local priorities and development plans. This legislation will help local coastal communities consider their future and act, if they wish, to protect the seashore qualities that they value most, even as these communities continue to grow, expand, evolve.

I ask unanimous consent to have the text of the bill printed following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1440

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Scenic Coastal Area System Act".

SEC. 2. FINDINGS.

(a) FINDINGS.—The Congress finds that—

(1) the Nation's coasts provide important recreational opportunities for increasing numbers of Americans;

(2) pressures associated with increasing human populations near the coasts, including pollution and uncoordinated development, threaten coastal lands and waters and diminish their recreational and scenic values; and

(3) traditionally, coastal areas of national significance have been given a degree of protection through direct public acquisition and management as national parks, seashores, and wildlife refuges, but protection by such means is costly and needlessly excludes compatible uses of the coastal area that often are an integral or defining part of the coastal landscape.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish a system of scenic coastal areas of regional or national significance protected through a partnership of local, State, and Federal governments;

(2) to encourage local efforts to protect scenic coastal areas through innovative means, including the use of land trusts, conservation easements, and other cooperative mechanisms;

(3) to increase the cost-effectiveness of efforts to conserve coastal resources by providing an alternative to reliance on public acquisition and Federal management; and

(4) to provide a mechanism by which scenic coastal areas can be managed as living landscapes in which private ownership, existing communities, and established land uses can be maintained, even as outstanding public values are protected.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "coast" means a shoreline border of a State on the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, one of the Great Lakes, and their adjacent or connecting sounds, bays, harbors, roadsteads, shallows, marshes, lagoons, bayous, ponds and estuaries;

(2) the term "coastal lands" means lands extending landward from a coast, including waters lying in or flowing through such lands;

(3) the term "coastal waters" means waters extending seaward of a coast, including islands lying therein;

(4) the term "land trust" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation pursuant to section 501(a) of the Code and that is organized for the purpose of acquiring lands and interests in land in a scenic coastal area and holding and managing such lands and interests in land in trust for the benefit of the public;

(5) the term "scenic coastal area" means a scenic coastal area designated as such by enactment of a law described in section 8(b)(2);

(6) the term "scenic coastal area commission" means a scenic coastal area commission established under section 7;

(7) the term "Secretary" means the Secretary of the Interior;

(8) the term "State" includes a State of the United States, Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territories of the Pacific Islands and American Samoa; and

(9) the term "system" means the National Scenic Coastal System established by section 3(a).

SEC. 4. ESTABLISHMENT OF SYSTEM.

(a) IN GENERAL.—There is established the National Scenic Coastal Area System, comprised of scenic coastal areas, which shall be administered by the Secretary.

(b) REGULATIONS.—The Secretary shall by regulation—

(1) designate an office in the Department of the Interior that will be responsible—

(A) for providing assistance to State and local governments pursuant to section 5(a);

(B) reviewing proposed coastal area plans pursuant to section 9(b);

(C) reviewing applications for cost-sharing grants pursuant to section 10; and

(D) monitoring the implementation of scenic coastal area plans; and

(2) specify criteria for the designation of scenic coastal areas that encourage biogeographic diversity and the representation of regionally and nationally important coastal landscapes within the system.

SEC. 5. ADVISORY AND TECHNICAL ASSISTANCE.

(a) ASSISTANCE IN PREPARATION OF PRELIMINARY STUDIES.—The Secretary shall provide advisory and technical assistance to a unit of State or local government or a scenic coastal area commission in the preparation of a preliminary study required by section 7 and in the preparation of a scenic coastal area plan required by section 9.

(b) THRESHOLD SHOWING.—Before committing resources to the rendering of assistance in the preparation of a preliminary study, the Secretary may require a threshold showing that—

(1) a proposed scenic coastal area possesses attributes that warrant protection under this Act; and

(2) there is a reasonable amount of local public support for the conduct of a study to determine whether the area should be designated as a scenic coastal area.

SEC. 6. PUBLIC PARTICIPATION.

(a) IN GENERAL.—A preliminary study described in section 7 and a scenic coastal area plan described in section 9 shall be conducted with full public participation, in accordance with such requirements as the Secretary may prescribe to ensure that all interested persons have ample opportunity to make their interests known.

(b) NOTICE AND HEARING.—Public participation under subsection (a) shall include—

(1) actual notice to each landowner in the proposed scenic coastal area and reasonable public notice to residents of the vicinity of the proposed scenic coastal area; and

(2) live hearings and opportunity to submit evidence and written comment.

SEC. 7. PRELIMINARY STUDIES.

(a) IN GENERAL.—The process of designating a scenic coastal area shall begin with a preliminary study by a unit of State or local government or a scenic coastal area commission pursuant to this subsection.

(b) PURPOSES.—The purposes of a preliminary study shall be to obtain—

(1) a description of the specific significant archaeological, biological, historical, wilderness, recreational, or other values possessed by the proposed scenic coastal area that warrant protection under this Act;

(2) a map of the proposed scenic coastal area; and

(3) an assessment of the local public support of and opposition to the proposed designation; and

(4) an assessment of the prospects of producing a scenic coastal area plan that satisifies the requirement of section 9(a), including a detailed description of—

(A) the specific public benefits, such as water access, scenic views, improved fisheries, and increased tourism that are anticipated; and

(B) the methods of protection, such as the use of land trusts, zoning, and easements, that would primarily be used.

(c) FURTHER ACTION.—(1) The findings of a preliminary study and recommendation for further action shall be submitted to the Governor and legislature of the State in which the proposed scenic coastal area is located.

(2) The Governor of the legislature of a State, as State law may allow, shall make a determination whether to nominate a scenic coastal area for inclusion in the system, and to proceed with preparation of a scenic coastal area plan in support of the nomination.

SEC. 8. SCENIC COASTAL AREA COMMISSIONS.

(a) IN GENERAL.—A coastal area plan for a nominated scenic coastal area shall be prepared and implemented by or under the guidance of a scenic coastal area commission established for the purpose of preparing and implementing a coastal area plan for a single scenic coastal area or for a group of scenic coastal areas.

(b) ESTABLISHMENT.—(1) A scenic coastal area commission may be established by action of the Governor, legislature, or other unit of State or local government that, under either general or specific authority of State law, has power to establish such a commission.

(2) The members of a scenic coastal area commission shall include—

(A) at least 1 representative of the State agencies with responsibility for parks or the environment;

(B) at least 1 representative of the State agenices with responsibility for planning, transportation, or costal zone management;

(C) at least 1 representative of the governments of the country, city, town, and other jurisdictions in which the nominated scenic coastal area is situated;

(D) 1 representative of a land trust that operates within the area of the nominated scenic coastal area;

(E) at least 2 representatives of residents of the vicinity of the nominated scenic coastal area, who are not local government officials, appointed by the Governor of the State in which a nominated scenic coastal area is located; and

(F) 1 representative of each Federal agency that manages land in the nominated scenic coastal area, appointed by the head of the agency.

(3) Members of a scenic coastal area commission shall be appointed for renewable terms of 3 years, except that in the initial appointment of members, one-third of their number shall be appointed from terms of 1 year and one-third of terms of 2 years.

(c) DUTIES.—The duties of a scenic coastal area commission are to—

(1) prepare and review a scenic coastal area plan pursuant to section 9;

(2) act as the lead management agency for the scenic coastal area;

(3) monitor and facilitate implementation of the scenic coastal area plan;

(4) interpret and apply the scenic coastal area plan in light of changing circumstances;

(5) ensure that there is continued public participation in the administration of the scenic coastal area;

(6) work to ensure that the scenic coastal area plan is follwed by landowners and local governments;

(7) exercise authority to carry out land use and conservation planning (including authority to administer zoning and permit programs); and

(8) coordinate management and development of the scenic coastal area among Federal, State, and local governments.

SEC. 9. SCENIC COASTAL AREA PLANS.

(a) IN GENERAL.—A scenic coastal area commission, in consultation with Federal, State, and local agencies with land management responsibilities and with public participation as described in section 6, shall prepare a scenic coastal area plan for a nominated scenic coastal area that—

(1) defines the boundaries of the coastal lands and coastal waters that are to be included in the scenic coastal area;

(2) describes the specific significant archaeological, biological, historical, recreational, scenic, wilderness, or other values that the scenic coastal area possesses that warrant protection under this Act;

(3) assesses the condition of the lands and waters in the scenic coastal area and of indigenous populations of shellfish, fish, wildlife, plants, and their habitats;

(4) describes the protections that are afforded to the lands, waters, and wildlife in the proposed scenic coastal area under existing Federal, State, and local law;

(5) describes the benefits to the public, such as increased recreational opportunities, and the anticipated effect on the State and local economy including benefits such as increased tourism and detriments such as restrictions on business activity, that its designation as a scenic coastal area and management under the scenic coastal area plan would cause;

(6) prescribes measures to be taken to preserve its values, achieve the anticipated benefits of its designation, and minimize any adverse effects that may result from its designation as a scenic coastal area;

(7) states the scientific and other information that supports the identification of the values of the proposed scenic coastal area and the approach taken in the plan to protect them;

(8) describes the roles of Federal, State, and local government and of the private sector in implementing the scenic coastal area plan, including recommendation of any changes in law and any government or private funding that may be necessary to implement the scenic coastal area plan;

(9) makes recommendations, including a statement of objectives, policies, and priorities to guide public and private land use decisions and public acquisition of land and interests in land in the scenic coastal area;

(10) describes the land and water uses that are permitted by State and local law in the scenic coastal area, and changes in the law that will accompany designation of the scenic coastal area, and the efforts that the State and local governments have made and will make to enforce any restrictions in land or water use that apply or will apply in the scenic coastal area;

(11) includes a map of the scenic coastal area that describes the land use restrictions that apply or will apply to each property in the scenic coastal area, unless that information can be clearly conveyed without the use of a map;

(12) certifies that the scenic coastal area commission has been authorized by State or local law to perform the functions of a scenic coastal area commission under this Act with respect to the coastal area, with a description of the existing or proposed personnel and facilities of the scenic coastal area commission;

(13) certifies that 1 or more land trusts have been established and can operate within the scenic coastal area; and

(14) describes the relationship between the scenic coastal area plan and the State's coastal zone management plan.

(b) SUBMISSION TO THE SECRETARY AND THE CONGRESS.—(1) A scenic coastal area commission shall submit a scenic coastal area plan to the Secretary of the Interior, who shall—

(A) approve the scenic coastal area plan and submit it to Congress; or

(B) return the scenic coastal area plan to the scenic coastal area commission with suggestion for modification or for additional research, public hearings, or other action that the Secretary determines are necessary before the scenic coastal area plan can be approved.

(2) A nominated scenic coastal area shall be included in the system upon enactment of a law approving a scenic coastal area plan submitted to the Congress pursuant to paragraph (1)(A).

SEC. 10. GRANTS.

The Secretary may make grants to pay up to 50 percent of the following costs:

(1) The direct costs to a State or local government or a scenic coastal area commission in the preparation of a scenic coastal area plan.

(2) The direct transaction costs, such as the costs of surveys, appraisals, and title searches, to a donor in making and a State or local government or a land trust in accepting a donation of land or an interest in land in a scenic coastal area consistent with a scenic coastal area plan.

(3) The costs of a State or local government or at land trust in purchasing land or an interest in land in a scenic coastal area and managing it in accordance with a scenic coastal area plan.

(4) The costs of constructing and maintaining, consistent with a scenic coastal area plan—

(A) scenic overlooks on highways in or overlooking a scenic coastal area; and

(B) road access to a scenic coastal area and to public facilities therein.

SEC. 11. RESTRICTION ON FEDERAL ACTIONS.

No department, agency, or instrumentality of the United States shall make an expenditure or take an action with respect to land or an interest in land, in a scenic coastal area, including the acquisition of land or an interest in land, unless the activity for which the expenditure is made or the action is consistent with the scenic coastal area plan for the scenic coastal area.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of the Interior—

(1) $20,000,000 for fiscal year 1993, $25,000,000 for fiscal year 1994, and $40,000,000 for fiscal year 1995 for the making of grants under section 10; and

(2) such sums as are necessary to administer the system under this Act.

ADDITIONAL COSPONSORS

S. 21

At the request of Mr. CRANSTON, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 21, a bill to provide for protection of the public lands in the California desert.

S. 67

At the request of Mr. THURMOND, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 67, a bill to amend the Internal Revenue Code of 1986 to provide that service performed for an elementary or secondary school operated primarily for religious purposes is exempt from the Federal unemployment tax.

S. 68

At the request of Mr. THURMOND, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 68, a bill to amend title 10, United States Code, to authorize the appointment of chiropractors as commissioned officers in the Armed Forces to provide chiropractic care, and to amend title 37, United States Code, to provide special pay for chiropractic officers in the Armed Forces.

S. 140

At the request of Mr. WIRTH, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 140, a bill to increase Federal payments in lieu of taxes to units of general local government, and for other purposes.

S. 308

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 308, a bill to amend the Internal Revenue Code of 1986 to permanently extend the low-income housing credit.

S. 310

At the request of Mr. PELL, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 310, a bill to provide for full statutory wage adjustments for prevailing rate employees, and for other purposes.

S. 323

At the request of Mr. CHAFEE, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 401

At the request of Mr. DOMENICI, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 401, a bill to amend the Internal Revenue Code of 1986 to exempt from the luxury excise tax parts or accessories installed for the use of passenger vehicles by disabled individuals.

S. 448

At the request of Mr. SYMMS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 448, a bill to amend the Internal Revenue Code of 1986 to allow tax-exempt organizations to establish cash and deferred pension arrangements for their employees.

S. 473

At the request of Mr. DECONCINI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor

of S. 473, a bill to amend the Lanham Trademark Act of 1946 to protect the service marks of professional and amateur sports organizations from misappropriation by State lotteries.

S. 597

At the request of Mr. DODD, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 597, a bill to amend the Public Health Service Act to establish and expand grant programs for evaluation and treatment of parents who are abusers and children of substance abusers, and for other purposes.

S. 612

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 612, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 747

At the request of Mr. PRYOR, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 747, a bill to amend the Internal Revenue Code of 1986 to clarify portions of the Code relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 914

At the request of Mr. GLENN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 914, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 924

At the request of Mr. KENNEDY, the names of the Senator from New York [Mr. MOYNIHAN] and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of S. 924, a bill to amend the Public Health Service Act to establish a program of categorical grants to the States for comprehensive mental health services for children with serious emotional disturbance, and for other purposes.

S. 1261

At the request of Mr. DOLE, the names of the Senator from New Hampshire [Mr. SMITH] and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1261, a bill to amend the Internal Revenue Code of 1986 to repeal the luxury excise tax.

S. 1270

At the request of Mr. MCCAIN, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of S. 1270, a bill to require the heads of departments and agencies of the Federal Government to disclose information concerning U.S. personnel classified as prisoners of war or missing in action.

S. 1327

At the request of Mr. BINGAMAN, the names of the Senator from Texas [Mr. BENTSEN] and the Senator from Tennessee [Mr. SASSER] were added as cosponsors of S. 1327, a bill to provide for a coordinated Federal program that will enhance the national security and economic competitiveness of the United States by ensuring continued U.S. technological leadership in the development and application of national critical technologies, and for other purposes.

S. 1332

At the request of Mr. BAUCUS, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Georiga [Mr. NUNN], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 1332, a bill to amend title XVIII of the Social Security Act to provide relief to physicians with respect to excessive regulations under the medicare program.

S. 1358

At the request of Mr. GRAHAM, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1358, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a hospice care pilot program and to provide certain hospice care services to terminally ill veterans.

S. 1381

At the request of Mr. GRAHAM, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1381 a bill to amend chapter 71 of title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with disability compensation.

S. 1383

At the request of Mr. MCCAIN, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1383, a bill to amend title 10, United States Code, to provide for payment under CHAMPUS of certain health care expenses incurred by members and former members of the uniformed services and their dependents who are entitled to retired or retainer pay and who are otherwise ineligible for such payment by reason of their entitlement to benefits under title XVIII of the Social Security Act because of a disability, and for other purposes.

S. 1398

At the request of Mr. REID, the names of the Senator from Missouri [Mr. BOND], the Senator from Iowa [Mr. HARKIN], the Senator from North Carolina [Mr. HELMS], the Senator from Hawaii [Mr. INOUYE], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1398, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from certain rules for determining contributions in aid of construction.

S. 1426

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 1426, a bill to authorize the Small Business Administration to conduct a demonstration program to enhance the economic opportunities of startup, newly established, and growing small business concerns by providing loans and technical assistance through intermediaries.

SENATE JOINT RESOLUTION 8

At the request of Mr. BURDICK, the names of the Senator from Indiana [Mr. LUGAR], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 8, a joint resolution to authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week."

SENATE JOINT RESOLUTION 78

At the request of Mr. BENTSEN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Joint Resolution 78, a joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

SENATE JOINT RESOLUTION 140

At the request of Mr. WARNER, the names of the Senator from Colorado [Mr. BROWN], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 140, a joint resolution to designate the week of July 27 through August 2, 1991, as "National Invent America! Week."

SENATE JOINT RESOLUTION 141

At the request of Mr. WARNER, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Joint Resolution 141, a joint resolution to designate the week beginning July 21, 1991, as "Korean War Veterans Remembrance Week."

SENATE JOINT RESOLUTION 157

At the request of Mr. ROCKEFELLER, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 157, a joint resolution to designate the week beginning November 10, 1991, as "Hire a Veteran Week."

SENATE JOINT RESOLUTION 173

At the request of Mr. DOLE, the names of the Senator from Washington [Mr. ADAMS], the Senator from Hawaii [Mr. AKAKA], the Senator from Alaska [Mr. STEVENS], and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of Senate Joint Resolution 173, a joint resolution designating 1991 as the 25th anniversary year of the formation of the Presi-

dent's Committee on Mental Retardation.

SENATE JOINT RESOLUTION 174

At the request of Mr. GRAHAM, the name of the Senator from Wisconsin [Mr. KOHL] was added as a cosponsor of Senate Joint Resolution 174, a joint resolution designating the month of May 1992, as "National Amyotrophic Lateral Sclerosis Awareness Month."

SENATE RESOLUTION 116

At the request of Mr. ROTH, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from North Dakota [Mr. BURDICK], the Senator from Wisconsin [Mr. KASTEN], the Senator from Idaho [Mr. CRAIG], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of Senate Resolution 116, a resolution to express the sense of the Senate in support of Taiwan's membership in the General Agreement on Tariffs and Trade.

SENATE RESOLUTION 150

At the request of Mr. MOYNIHAN, the names of the Senator from Oregon [Mr. PACKWOOD], the Senator from Connecticut [Mr. DODD], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. AKAKA], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of Senate Resolution 150, a resolution expressing the sense of the Senate urging the President to call on the President of Syria to permit the extradition of fugitive Nazi war criminal Alois Brunner.

SENATE RESOLUTION 152—CHANGING MINORITY COMMITTEE APPOINTMENTS

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 152

Resolved, That the following Senator shall be added to the minority party's membership on the Committee on Foreign Relations for the One Hundred Second Congress or until their successors are appointed:

Mr. Jeffords.

AMENDMENTS SUBMITTED

VIOLENT CRIME CONTROL ACT

SIMON (AND KOHL) AMENDMENT NO. 520

Mr. SIMON (for himself and Mr. KOHL) proposed an amendment to the bill (S. 1241) to control and reduce violent crime; as follows:

Amend amdt. No. 518 (Thurmond) as follows:

In the first section (b)(B)(i)(I) insert after "literacy," "or in the case of an individual with a disability, achieves a level of functional literacy commensurate with his or her ability.".

In (b)(B)(iii) strike all after "appropriate education services" and insert in lieu: "and the screening and testing of all inmates for functional literacy and disabilities affecting functional literacy, including learning disabilities, upon arrival in the system or at the jail or detention center.".

Strike all of (b)(2)(D).

In (c)(2)(D) insert after "literacy" the following: "and the names and types of tests that were used to determine disabilities affecting functional literacy.".

BIDEN AMENDMENT NO. 521

(Ordered to lie on the table.)

Mr. BIDEN submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

Add at the end of the bill the following:

TITLE—CIVIL RIGHTS

SEC. 301. CIVIL RIGHTS.

(a) FINDINGS.—The Congress finds that—

(1) crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender;

(2) current law provides a civil rights remedy for gender crimes committed in the workplace, but not for gender crimes committed on the street or in the home;

(3) State and Federal criminal laws do not adequately protect against the bias element of gender-motivated crimes, which separates these crimes from acts of random violence, nor do those laws adequately provide victims of gender-motivated crimes the opportunity to vindicate their interests;

(4) existing bias and discrimination in the criminal justice system often deprive victims of gender-motivated crimes of equal protection of the laws and the redress to which they are entitled;

(5) gender-motivated violence has a substantial adverse effect on interstate commerce, by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business and in places involved in interstate commerce;

(6) gender-motivated violence has a substantial adverse effect on interstate commerce, by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products;

(7) a Federal civil rights action as specified in this section is necessary to guarantee equal protection of the laws and to reduce the substantial adverse effects of gender-motivated violence on interstate commerce; and

(8) victims of gender-motivated violence have a right to equal protection of the laws, including a system of justice that is unaffected by bias or discrimination and that, at every relevant stage, treats such crimes as seriously as other violent crimes.

(b) RIGHTS, PRIVILEGES AND IMMUNITIES.—All persons within the United States shall have the same rights, privileges and immunities in every State as is enjoyed by all other persons to be free from crimes of violence motivated by the victim's gender, as defined in subsection (d).

(c) CAUSE OF ACTION.—Any person, including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State, who commits a crime of violence motivated by gender and thus deprives another of the rights, privileges or immunities secured by the Constitution or laws as enumerated in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as the court may deem appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "crime of violence, motivated by gender" means any crime of violence, as defined in paragraph (2), committed because of gender or on the basis of gender; and

(2) the term "crime of violence" means an act or series of acts that would come within the meaning of State or Federal offense described in section 16 of title 18, United States Code, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States.

(e) LIMITATION AND PROCEDURES.—

(1) LIMITATION.—Nothing in this section entitles a person to a cause of action under subsection (c) for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be "motivated by gender" as defined in subsection (d).

(2) NO PRIOR CRIMINAL ACTION.—Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the necessary elements of a cause of action under subsection (c).

SEC. 302. CONFORMING AMENDMENT.

The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) is amended—

(1) in the last sentence, by striking "or" after "Public Law 92-318,"; and

(2) by adding after "1964," the following: ", or title III of the Violence Against Women Act of 1991,".

D'AMATO AMENDMENT NO. 522

(Ordered to lie on the table.)

Mr. D'AMATO submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following:

SEC. . SHORT TITLE.

This amendment may be cited as the Money Laundering Improvements Act of 1991.

TITLE —FORFEITURE PROCEDURES IN MONEY LAUNDERING CASES

SEC. . JURISDICTION IN CIVIL FORFEITURE CASES.

(a) IN GENERAL.—Section 1355 of title 28, United States Code, is amended by designating the existing matter as subsection (a), and by adding the following new subsections:

"(b) (1) A forfeiture action or proceeding may be brought in the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or in any other district where venue for the forfeiture action or proceeding is specifically provided by section 1395 of this title or any other statute.

"(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District Court for the District of Columbia.

"(c) "In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon mo-

tion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.".

SEC. . CIVIL FORFEITURE OF FUNGIBLE PROPERTY.

(a) Chapter 46 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§984. Civil Forfeiture of Fungible Property

"(a) This section shall apply to any action for forfeiture brought by the United States.

"(b) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or other fungible property, it shall not be necessary for the government to identify the specific property involved in the offense that is the basis for the forfeiture, nor shall it be a defense that the property involved in such an offense has been removed and replaced by identical property. Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

"(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than one year from the date of the offense.

"(d) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against an account of an agency or branch of a foreign bank (as such terms are defined in paragraphs 1 and 3 of section 1(b) of the International Banking Act of 1978) held in the United States at another financial institution where said agency or branch is not itself a party to the offense that is the basis for the forfeiture.".

(b) The amendments made by this section shall apply retroactively.

(c) The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"984. Civil forfeiture of fungible property.".

SEC. . ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"985. Administrative Subpoenas

"(a) (1) For the purpose of conducting a civil investigation in contemplation of a civil forfeiture proceeding under this title or the Controlled Substances Act, the Attorney General may—

"(A) administer oaths and affirmations;

"(B) take evidence; and

"(C) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

"(2) The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this subsection. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

"(3) In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under paragraph (2) not later than 5 days after the date of service.

"(4) A subpoena may be issued pursuant to this subsection at any time up to the commencement of a judicial proceeding under this section."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code is amended by adding the following:

"985. Administrative Subpoenas."

SEC. . PROCEDURE FOR SUBPOENAING BANK RECORDS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"986. Subpoenas for Bank Records

"(a) At any time after the commencement of any action for forfeiture brought by the United States under this title or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in 31 U.S.C. 5312(a), to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

"(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any records called for in the subpoena.

"(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"986. Subpoenas for Bank Records."

Title .—Money Laundering

SEC. . DELETION OF REDUNDANT AND INADVERTENTLY LIMITING PROVISIONS IN 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "section 1341 relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),"; and

(2) by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting "section 422 of the Controlled Substances Act".

SEC. . USE OF GRAND JURY INFORMATION FOR BANK FRAUD AND MONEY LAUNDERING FORFEITURES.

Section 3322(a) of title 18, United States Code, is amended—

(1) by striking "section 981(a)(1)(C)" and inserting "section 981(a)(1)"; and

(2) by inserting "or money laundering" after "concerning a banking law".

SEC. . STRUCTURING TRANSACTIONS TO EVADE CMIR REQUIREMENTS.

(a) Section 5324 of title 31, United States Code, is amended—

(1) by designating the existing provisions as subsection (a);

(2) by adding at the end the following new subsection:

"(b) No person shall for the purpose of evading the reporting requirements of section 5316—

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

"(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT. Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

(c) FORFEITURE. (1) Section 981(a) of title 18, United States Code, is amended by striking "5324" and inserting "5324(a)"; and

(2) Section 5317(c) of title 31, United States Code, is amended by inserting after the first sentence the following: "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government."

SEC. . DISCLOSURE OF GEOGRAPHIC TARGETING ORDER.

Section 5326 of title 31, United States Code, is amended by adding the following new subsection:

"(c) No finanical institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of or terms of the order to any person except as prescribed by the Secretary."

SEC. . CLARIFICATION OF DEFINITION OF FINANCIAL INSTITUTIONS IN 18 U.S.C. 1956 AND 1957.

(a) Section 1957(f)(1) of title 18, United States Code, is amended by striking "financial institution (as defined in section 5312 of title 31)" and inserting in lieu thereof "financial institution (as defined in section 1956)".

(b) Section 1956(c)(6) of title 18, United States Code, is amended by striking "and the regulations" and inserting in lieu thereof "or the regulations".

SEC. . DEFINITION OF FINANCIAL TRANSACTION IN 18 U.S.C. 1956.

Section 1956(c)(4)(A) of title 18, United States Code, is amended—

(1) by striking ", which in any way or degree affects interstate or foreign commerce," and inserting that same stricken language after "a transaction"; and

(2) by inserting after "monetary instruments" the following: ", or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft,".

SEC. . OBSTRUCTING A MONEY LAUNDERING INVESTIGATION.

Section 1510(b)(3)(B)(i) is amended by striking "or 1344" and inserting in lieu thereof ", 1344, 1956, 1957, or chapter 53 of title 31 (31 U.S.C. 5311 et seq.)".

SEC. . AWARDS IN MONEY LAUNDERING CASES.

Section 524(c)(1)(B) of title 28, United States Code, is amended by inserting "or of

sections 1956 and 1957 of title 18, sections 5313, and 5324 of title 31, and section 6050I of title 26, United States Code" after "criminal drug laws of the United States".

SEC. . PENALTY FOR MONEY LAUNDERING CONSPIRACIES.

Section 1956 of title 18, United States Code, is amended by inserting at the end the following new subsection:

"(g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. . TECHNICAL AND CONFORMING AMENDMENTS TO MONEY LAUNDERING PROVISION.

(a) Paragraph (a)(2) and subsection (b) of section 1956 of title 18, United States Code, are amended by striking "transportation" each place it appears and inserting in lieu thereof "transportation, transmission, or transfer";

(b) Subsection (a)(3) of section 1956 of title 18, United States Code, is amended by striking "represented by a law enforcement officer" and inserting in lieu thereof "represented".

SEC. . PRECLUSION OF NOTICE TO POSSIBLE SUSPECTS OF EXISTENCE OF A GRAND JURY SUBPOENA FOR BANK RECORDS IN MONEY LAUNDERING AND CONTROLLED SUBSTANCE INVESTIGATIONS.

Section 1120(b)(1)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(b)(1)(A)) is amended by inserting before the semicolon "or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, sections 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26, United States Code".

SEC. . DEFINITION OF PROPERTY FOR CRIMINAL FORFEITURE

Section 982(b)(1)(A) of title 18, United States Code, is amended by striking "(c)" and inserting "(b), (c)".

SEC. . EXPANSION OF MONEY LAUNDERING AND FORFEITURE LAWS TO COVER PROCEEDS OF FOREIGN VIOLENT CRIMES.

Sections 981(a)(1)(B) and 1956(c)(7)(B) of title 18, United States Code, are each amended by—

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "or (ii) kidnapping, robbery, or extortion" after "Controlled Substances Act)".

SEC. . ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE TREASURY DEPARTMENT AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited."

SEC. . NEW MONEY LAUNDERING PREDICATE OFFENSES

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by deleting "or" before "section 16" and inserting ", or any felony violation of the Foreign Corrupt Practices Act (15 U.S.C. §78dd-1 et seq.)" before the semi-colon; and

(2) by inserting "section 1708 (theft from the mail)," before "section 2113".

Title .—Bank Secrecy and Right to Financial Privacy Amendments

SEC. . AMENDMENTS TO THE BANK SECRECY ACT.

(a) Section 5324 of title 31, United States Code, is amended by adding the words "or section 5325 or the regulations thereunder" after the words "section 5318(a)," each time they appear.

(b) Section 5318 of title 31, United States Code is amended by adding new subsections (g) and (h), as follows:

"(g)(1) The Secretary may prescribe that financial institutions report suspicious transactions relevant to possible violation of law or regulation.

"(2) A financial institution may not notify any person involved in the transaction that the transaction has been reported.

"(3) The provisions of section 1103(c) of the Right to Financial Privacy Act of 1978 (Title XI of Public Law 95-630, as amended, 12 U.S.C. 3403(c)) shall apply to reports of suspicious transactions under this section.

"(h) In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to have anti-money laundering programs, including at a minimum, the development of internal policies, procedures and controls, designation of a compliance officer, an ongoing employee training program, and an independent audit function to test the program. The Secretary may promulgate minimum standards for such procedures.".

(c) Section 5321(a)(5)(A) of title 31, United States Code, is amended by adding "or any person willfully causing" after "willfully violates".

(d) Section 5322 of title 31, United States Code, is amended adding "or section 5318(g)(1)" after "under section 5315," each time it appears.

(e) Section 1829b(j)(1) of title 12, United States Code, is amended by adding "or any person who willfully causes such a violation" after "gross negligence violates".

(f) Section 1955 of title 12, United States Code, is amended by adding "or any person willfully causing a violation of the regulation" after "applies".

(g) Section 1957 of title 12, United States Code, is amended by adding "or willfully causes a violation" after "whoever willfully violates".

SEC. . AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) Section 1103(a) of the Right to Financial Privacy Act of 1978, (Title XI of Public Law 95-630, as amended, 12 U.S.C. 3403(c)), is amended

(1) by deleting the words, "in this chapter";

(2) by removing the period at the end thereof and adding the following:

"or for refusal to do business with any person before or after disclosure of a possible violation of law or regulation to a Government authority. For purposes of this section, in addition to financial institutions under this chapter, the term "financial institution" includes any business defined as a financial institution in section 5312(a)(2) of Title 31, United States Code, that is required by the Secretary of the Treasury under section 5318(g) of Title 31, United States Code, to file a suspicious transaction report with the Secretary.".

(b) Section 1112 of the Right to Financial Privacy Act of 1978 (Title XI of Public Law 95-630, as amended, 12 U.S.C. 3412) is amended—

(1) in paragraph (f)(1), by adding the words "or Secretary of the Treasury" after words "Attorney General";

(2) in paragraph (f)(1)(A) by adding the words "and in the case of the Secretary of the Treasury, a money laundering violation or violation of Chapter 53 of title 31, United States Code" after the word "law";

(3) in paragraph (f)(2) adding the words "Department of the Treasury" after the words "Department of Justice"; and

(4) by adding a new subsection (g) as follows:

"(g) Financial records originally obtained by an agency in accordance with this chapter may be transferred to the Secretary of the Treasury for analysis and use by the Financial Crimes Enforcement Network ("FinCEN") for criminal law enforcement purposes without customer notice."

Mr. D'AMATO. Mr. President, I ask unanimous consent that an analysis of my amendment, No. 522, be printed in the RECORD.

SECTION ANALYSIS OF MONEY LAUNDERING IMPROVEMENTS ACT OF 1991

SECTION 101

Title 28, Section 1355, gives the district courts subject matter jurisdiction over civil forfeiture cases. The venue statutes for forfeiture actions provide for venue in the district in which the subject property is located, 28 U.S.C. §1395, or in the district where a related criminal action is pending, 18 U.S.C. §981(h). But no statute defines when a court has jurisdiction over *the property* that is the subject of the suit. *See United States* v. *23,481*, 740 F. Supp. 950 (E.D.N.Y. 1990). This omission has resulted in unnecessary confusion and repetitive litigation of jurisdictional issues, *see, e.g., United States* v. *10,000 in U.S. Currency*, 860 F.2d 1511 (9th Cir. 1988); *United States* v. *Premises Known as Lots 50 & 51*, 681 F. Supp. 309 (E.D.N.C. 1988), and results in the government's having to file multiple forfeiture actions in different districts in the same case in order to satisfy jurisdictional requirements.

This provision, styled as an amendment to 28 U.S.C. §1355, resolves these issues for all forfeiture actions brought by the government.

Subsection (b)(1) sets forth as a general rule that jurisdiction for an *in rem* action lies in the district in which the acts giving rise to the forfeiture were committed. This would be a great improvement over current law which requires the government to file separate forfeiture actions in each district in which the subject property is found, even if all of the property represents the proceeds of criminal activity committed in the same place. (For example, if a Miami-based drug dealer launders his money by placing it in bank accounts in six states, the government would have to institute six separate forfeiture actions under §981 to recover the money.)

Under the early *in rem* cases, jurisdiction was proper only in the district where the property was "located." *See Pennington* v. *Fourth National Bank*, 243 U.S. 269, 272 (1917). This doctrine has been substantially eroded in recent years; and at least one court has speculated that the "minimum contacts" test of *International Shoe* may have completely replaced the territoriality question as a basis for the court's *in rem* jurisdiction. *See United States* v. *$10,000 in U.S. Currency*, *supra*. In any event, to the extent that the doctrine remains viable, it has generated litigation over various issues, such as the "location" of money seized in one district and deposited in an account in another district during the pendency of the forfeiture action. *See United States* v. *$23,481*, 740 F. Supp. 950.

Subsection (b)(1) resolves these issues by providing that the court in the district where the acts giving rise to the forfeiture occurred has jurisdiction over the forfeiture action. The subsection also makes clear this provision is not intended to affect jurisdiction based on the venue-for-forfeiture statutes that Congress has previously enacted or may enact in the future. For example, 28 U.S.C. §1395 provides for venue wherever the property is located, and 18 U.S.C. §981(h) and 21 U.S.C. §881(j) provide for venue in a civil forfeiture case in the district where a related criminal prosecution is pending. Although they do not say so explicitly, those statutes apply not only to venue but also to jurisdiction, since it would make no sense for Congress to provide for venue in a district without intending to give the court in that district jurisdiction as well. *See* 130 Cong. Rec., daily ed., January 26, 1984, at S267 (statement of Senator Laxalt explaining venue-for-forfeiture provision in 21 U.S.C. §881(j)).

Subsection (b)(1) thus makes clear that these venue-for-forfeiture statutes also give the court in the relevant district jurisdiction over the defendant property even if the property was not seized in that district and is not located there. *See Premises Known as Lots 50 & 51*, 681 F. Supp. at 311–13 (discussing constitutionality of this approach under 21 U.S.C. §881(j)).

Subsection (b)(2) addresses a problem that arises whenever property subject to forfeiture under the laws of the United States is located in a foreign country. As mentioned, under current law, it is probably no longer necessary to base *in rem* jurisdiction on the location of the property if there have been sufficient contacts with the district in which the suit is filed. *See United States* v. *$10,000 in U.S. Currency*, *supra*. No statute, however, says this, and the issue has to be repeatedly litigated whenever a foreign government is willing to give effect to a forfeiture order issued by a United States court and turn over seized property to the United States if only the United States is able to obtain such an order.

Subsection (b)(2) resolves this problem by providing for jurisdiction over such property in the United States District Court for the District of Columbia, in the district court for the district in which any of the acts giving rise to the forfeiture occurred, or in any other district where venue would be appropriate under a venue-for-forfeiture statute. If the acts giving rise to the forfeiture occurred in more than one district, as would commonly occur in a money laundering case, for example, jurisdiction would lie in any of those districts or in the District of Columbia.

Finally, subsection (c) addresses a recurring problem involving appeals in civil forfeiture actions. The question has two parts: 1) whether the removal of the *res* from the jurisdiction of the court following the entry of the district court order deprives the appellate court of jurisdiction over the appeal; and 2) whether the appellate court should take steps to ensure that the property is not diminished in value, taken out of the country, or otherwise made unavailable to the appellant in the event the appeal results in the reversal of the district court's judgment. *See United States* v. *Parcel of Land (Woburn City Athletic Club, Inc.)*, —F. 2d—, No. 90-1752 (1st Cir. Mar. 12, 1991), slip op. 6-9 (discussing but not deciding whether appellate court retains jurisdiction when district court does not stay forfeiture order and no longer has control over *res*).

The first sentence in subsection (c) resolves the first issue by providing without exception that an appellate court is not deprived of jurisdiction over an otherwise proper appeal simply because the *res* has been removed from the jurisdiction. This will allow successful claimants the use of their property pending appeal, and will allow the government to move the property for storage or investment purposes, without depriving the losing party of his appellate rights. The second sentence provides, however, that the appellate court is obliged to take whatever steps it deems necessary, including ordering the stay of the district court order or requiring the appellant to post an appeal bond, to ensure that while the appeal is pending, the party exercising control over the property does not take any action that would deprive the appellant of the full value of the property should the district court's judgment be reversed. The types of actions that the appellant court must seek to protect against are those listed in 21 U.S.C. §853(p).

SECTION 102

In 1986, Congress amended the criminal forfeiture statute, 21 U.S.C. §853, to authorize the forfeiture of substitute assets. *See* Section 1153(b), Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207-13. This provision, added as a new subsection (p), applies whenever property otherwise subject to forfeiture is unavailable because it cannot be located, has been sold to a third party, has been placed beyond the jurisdiction of the court, has been diminished in value, or has been commingled with other assets. In such a case, the court is authorized to order the forfeiture of any other property of equal value. In 1988, an identical provision was added to the criminal forfeiture statute that governs forfeitures in money laundering cases, 18 U.S.C. 982(b). *See* Sections 6463-64, Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 102 Stat. 4374-75.

In a criminal case, the purpose of forfeiture is to punish the defendant. It is an *in personam* action directed at the defendant personally to punish him for his criminal acts. The scope of the punishment is circumscribed by the value of the property involved in or acquired through the commission of the criminal acts, but there is no reason why the punishment can be imposed only through the forfeiture of a specific piece of property. The forfeiture of any property of equal value imposes the same punishment fairly and effectively. If this were not the rule, a defendant could escape the punishment of forfeiture merely by, for example, placing certain property out of the reach of the court or commingling it with other property so that it could not easily be identified. Under the 1986 and 1988 amendments, the court can insure that the appropriate punishment is imposed irrespective of such attempts to avoid the consequences of criminal wrongdoing by ordering the forfeiture of some other property the defendant owns.

Forfeiture in a civil case is based on a different premise: It is intended not to punish a defendant; nor is it directed at any property owner personally. Rather it is an *in rem* action directed at a specific piece of property involved in criminal wrongdoing. In a civil forfeiture case, the property involved in a criminal offense is itself considered "guilty" and is forfeitable to the government regardless of the guilt or innocence of its owner. Thus it normally would be inconsistent with the theory of civil forfeiture to allow a court to order forfeiture of a substitute asset. In other words, if the theory underlying the forfeiture is that a specific piece of property is "guilty" and therefore forfeitable regardless of who its owner may be, it would make no sense for the government to order the forfeiture of another "innocent" asset when the guilty one is unavailable.

For this reason, the 1986 and 1988 substitute asset amendments applied only to the criminal forfeiture statutes, and not to the civil forfeiture statutes. That distinction should be maintained; but there are instances where strict adherence to the notion of forfeiture in civil cases only of identifiable "guilty" property makes no sense.

In the case of discrete tangible property, such as a car or boat or piece of real estate, the government should be limited in a civil case only to the forfeiture of the property actually involved in the criminal offense. If that property is unavailable, or is diminished in value, the government is simply "out of luck" since it is title to the property, not punishment of its owner, that the government has a right to pursue.

But in cases where the property is fungible, the government should be able to pursue title to the property without having to identify the specific item or items actually involved in an offense. In a case involving a quantity of cash, for example, that had been commingled with other cash, or kept in a place where identical quantities of cash were constantly being added and subtracted, the government could no more identify the specific dollar bills subject to forfeiture than it could identify a specific ton of grain in a grain elevator or a specific pile of bricks in the brickyard. In such a case, the government should be able to obtain title through civil forfeiture to the identical property found in the place where the "guilty" property had been kept.

The courts have recognized the soundness of this argument. In *United States* v. *Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986), for example, the Second Circuit held that where funds deposited in a certain bank account were subject to civil forfeiture, the government could assume that the "guilty" property remained in the account, notwithstanding subsequent deposits and withdrawals, as long as the balance in the account always remained greater than or equal to the sum subject to forfeiture. *Id.* at 1160. In that case, however, the court based its holding on accepted accounting principles—such as the theory of "first in, last out"—rather than on any statutory authority that would be applicable to all cases involving fungible property. Experience has shown that this approach is inadequate to protect the property rights of the government in such cases.

Consider, for example, the case of a bank account involved in a money laundering scheme. Under 18 U.S.C. §981, all property involved in money laundering is forfeitable to the United States. *United States* v. *All Monies*, 754 F. Supp. 1467 (D. Haw. 1991). Thus if a money laundering offense involving a million dollars occurs on January 1, and the laundered money is deposited into a given bank account on that date, the government may seize the million dollars from the account as soon as it is deposited. Under *Banco Cafetero*, the government may still seize the million dollars a month later even if it can be shown that during the month of January there were numerous other deposits and withdrawals as long as the balance never fell below one million dollars. This is because the government is entitled to assume that the first deposit—the million dollars in laundered money—remains in the account until the last withdrawal is made.

The clever money launderer, however, being aware of the limitations of the accounting theories underlying cases such as

Banco Cafetero, will choose to place his laundered funds in accounts where the balance is highly volatile. For example, he may place the laundered funds in an account held by a money exchanger where, because of the nature of the business, the balance may vary from zero to a million dollars several times a week; yet in that case, the launderer may be assured that his money will still be available when he wants it because the balance in the account is sure to rise again to the million dollar level. Thus, to continue the above example, if a million dollars in laundered drug money is deposited into a volatile bank account on January 1, and the balance in facts dips to zero several times during the month but returns to one million dollars by the first day of February, the million dollars is still available to the criminal money launderer, but it is not forfeitable to the government.

The above scenario illustrates a weakness in the *Banco Cafetero* holding that can easily be exploited by money launderers, drug traffickers, and others whose criminal proceeds are subject to civil forfeiture. There is no reason why fungible property, such as the balance in a bank account, should escape forfeiture simply because the property is capable of being moved in and out of the government's view with great rapidity. If despite the apparent disbursement of the property it remains, by its fungible nature, capable of being replaced or reconstituted in identical form at any time, it should remain subject to forfeiture. Any other rule merely rewards those who contrive sophisticated shell games to hide the whereabouts of criminally derived property.

The proposed amendment adds a new section 984 to the forfeiture chapter in title 18 that is applicable to any civil forfeiture action brought under title 18 or title 21, including violations of the Bank Secrecy Act punishable by 31 U.S.C. §5322 for which forfeiture actions are undertaken pursuant to 18 U.S.C. §981. Sec. 984 provides that in cases involving fungible property, property is subject to forfeiture if it is identical to otherwise forfeitable property, is located or maintained in the same way as the original forfeitable property, and not more than one year has passed between the time the original property subject to forfeiture was so located or maintained and the time the forfeiture action was initiated by seizing the property or filing the complaint, regardless of whether or not the fungible property was continuously present or available between the time it became forfeitable and the time it was seized. (The time limitation is considered necessary to ensure that the property forfeited has a reasonable nexus to the offense giving rise to the original action for forfeiture.)

Thus under the amendment, a million dollars in laundered drug money that is deposited into a bank account on January 1, would be forfeitable from that account any time within the ensuing year that the balance in the account was at least one million dollars, even if, at various times in the interim, the balance fluctuated above and below the million dollar level. Once a year had passed, however, the government could no longer reasonably claim that the million dollars in the account was the same money that was originally forfeitable, and the forfeiture action could not be maintained.

The provision in subsection (d) carves out a very narrow exception that precludes uses of section 984 to forfeit assets held in the clearing account of a foreign bank through which laundered funds moved in the past, but where such funds are no longer to be found. The exception would not apply where the foreign bank itself was engaged in the offense giving rise to the forfeiture action.

The retroactive application of these amendments, as set forth in subsection (b), is in keeping with the normal rule for construing amendments to civil statutes. *See United States* v. *$5,644,540 in U.S. Currency*, 799 F.2d 1357, 1364 n. 8 (9th Cir. 1986) (*ex post facto* clause does not apply to civil forfeiture case).

SECTION 103

This gives the Attorney General the means, by way of an administrative subpoena, to acquire evidence in contemplation of a civil forfeiture action brought under title 18 or title 21. Its provisions are taken verbatim from Section 951 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 1833a), Pub. L. 101–73, and it is intended to give the Attorney General the means to gather evidence in contemplation of a civil forfeiture action in a money laundering case in the same way that he may presently gather evidence in contemplation of civil enforcement action in a FIRREA case.

As Congress recognized in enacting Section 951 of FIRREA two years ago, such subpoena authority is necessary because in the context of a civil law enforcement action there is no procedure analogous to the issuance of a grand jury subpoena that allows the government to gather evidence before the filing of a complaint.

There is a simple precedent for this proposal. In RICO, for example, 18 U.S.C. §1968 provides for the issuance of a civil investigative demand to allow the government to gather evidence in contemplation of bringing a civil RICO suit. That provision was drawn from the Anti-Trust Civil Process Act, 15 U.S.C. §§1311–1314,[1] and was in turn the basis for §951 in FIRREA. Because the language of the present section is taken directly from FIRREA, the same limitations would apply to subpoenas issued in civil forfeiture investigations in money laundering cases as apply to civil enforcement of the bank fraud statutes.

SECTION 104

This provision simplifies the procedure for gathering bank records once a complaint is filed by any civil forfeiture case.

In a typical case, a wrongdoer such as a money launderer or drug trafficker, will place his illegally obtained property in bank accounts in numerous locations, often in a number of different states or districts. Presently, once a civil forfeiture complaint is filed, records pertaining to such accounts, or any other accounts that might be relevant to the forfeiture action, can be obtained only through the discovery process under the Federal Rules of Civil Procedure which requires the government to obtain a separate subpoena for the records in each and every one of the judicial districts in which the banks holding the records are located.

Thus if a forfeiture action is filed in Texas, but records relevant to the case are held by banks in Maimi, New York, and Los Angeles, the United States Attorney in Texas has to seek the issuance of subpoenas *duces tecum* by courts in Florida, New York and California in order to obtain the records needed in the Texas action. This is because Rule 45, FED. R. Civ. Pro., contemplates the issuance of a subpoena *duces tecum* only in the context of the taking of a deposition, and it requires that the subpoena be issued in the district where the deposition is to be taken.

In most civil forfeiture cases, there is no need to take the deposition of the custodian of bank records, and it is unnecessarily burdensome to have the subpoena issued by the court in the district where the bank is located when the forfeiture action is pending in some other district.

The proposed amendment would provide for the issuance of a subpoena duces tecum for bank records by the Clerk of the Court in the district where the forfeiture action was pending. Any party to the action could request the issuance of such a subpoena and would be required to give notice to all other parties. The final subsection makes clear that this section is intended to complement the discovery rules set forth in the Federal Rules of Civil Procedure and does not preclude any party from pursuing discovery under those Rules.

SECTION 201

Section 2706 of the Crime Control Act of 1990 added several bank fraud offenses to the definition of specified unlawful activity in §1956(c)(7)(D). The additions included 18 U.S.C. §§1005-07 and 1014. Unfortuantely, this amendment contained another provisions that couid cause major problems in money laundering cases involving the proceeds of mail and wire fraud offenses.

Currently, under §1956(c)(7)(A), all RICO predicates are included in the definition of "specified unlawful activity". Because mail and wire fraud are RICO predicates, the laundering of the proceeds of *any* mail or wire fraud offense is currently prosecutable under §§1956 and 1957.

The 1990 amendment, however, added mail and wire fraud offenses "affecting a financial institution" to the definition of specified unlawful activity. The context of the amendment makes clear that it was the intent of Congress to *expand* the money laundering statute to cover banking crimes. *See Congressional Record*, daily ed., July 31, 1990, at H6005 (explaining section 106 of H.R. 5401 and indicating that new predicate offenses were being *added*, not limited). Unfortunately, the wording of the amendment will allow some defendants to argue that Congress could not have intended to pass a meaningless statute and that it therefore, must have intended to *restrict* the money laundering statute only to those fraud offenses affecting financial institutions. If that interpretation were to be accepted by a court, the result would be to exempt the laundering of the proceeds of many white collar crimes and public corruption offenses from prosecution under the money laundering statute.

This amendment makes clear that Congress' clear intent in enacting the savings and loan provisions in the 1990 Crime Control Act was to *enhance* prosecutorial authority, not restrict it, and that therefore the amendment to §1956(c)(7)(D) was a drafting error that was not intended to affect the inclusion of all mail and wire fraud offenses as money laundering predicates under §1956(c)(7)(A). The amendment also strikes the duplicate reference to 18 U.S.C. §1344 as that section is also already a money laundering predicate under §1956(c)(7)(A).

Finally, this section amends the reference to the drug paraphernalia statute to conform to the redesignation of that statute as part of the Controlled Substances Act by section 2401 of the Crime Control Act of 1990.

[1] *See* S. Rep. No. 91-617, 91st Cong., 1st Sess. 161 (1969). For a list of other statutes that authorize the gathering of evidence by means of an administrative subpoena, *see* H. Rep. No. 94-1343, 94th Cong., 2nd Sess. 22 n.2 reprinted in 1970 U.S. CODE & ADMIN. NEWS 2617.

SECTION 202

This section amends a provision in the FIRREA Act of 1989 to conform to forfeiture amendments relating to bank fraud and money laundering that were included in the Crime Control Act of 1990.

Under current law, enacted in FIRREA in 1989, a person in lawful possession of grand jury information concerning a banking law violation may disclose that information to an attorney for the government for use in connection with a civil forfeiture action under 18 U.S.C. §981(a)(1)(C). The purpose of this provision is to make it possible for the government to use grand jury information to forfeit property involved in a bank fraud violation; it does not permit disclosure to persons outside of the government, nor does it permit government attorneys to use the information for any other purpose. Rather, it merely recognizes civil forfeiture actions under §981 as part of any law enforcement action arising out of a criminal investigation.

The limitation to forfeiture under "§981(a)(1)(C)," however, is obsolete. At the time FIRREA was enacted, all forfeitures relating to bank fraud violations were brought under §981(a)(1)(C). In the Crime Control Act of 1990, however, Congress added paragraphs (D) and (E) to section 981(a)(1), relating to other bank fraud violations involving the Resolution Trust Corporation. The amendment strikes the reference to paragraph (C) so that disclosure under 18 U.S.C. §3322(a) will be permitted in regard to any forfeiture under any part of §981(a)(1) including money laundering forfeitures.

SECTION 203

This amendment is identical to the provision that passed both the House and Senate in the 101st Congress. *See* §810 of S. 3037, §32 of H.R. 5889.

In the Anti-Drug Abuse Act of 1986, Congress created 31 U.S.C. 5324, which made it a crime to structure a transaction for the purpose of evading a currency transaction reporting requirement. The amendment creates a parallel provision regarding the monetary instrument reports (commonly called "CMIRs") that must be filed whenever instruments having a value of more than $10,000 are imported or exported.

Under the new provision, codified as subsection (b) of §5324, it would be illegal to structure the importation or exportation of monetary instruments with the intent to evade the CMIR reporting requirement. As is the case presently for structuring cases involving currency transaction reports, the government would have to prove that the defendant knew of the existence of the CMIR reporting requirement, but it would not have to prove that the defendant knew that structuring itself had been made illegal. *United States* v. *Hoyland*, 903 F.2d 1288 (9th Cir. 1990).

The amendment made in subsection (b) is technical in nature and is intended to avoid a double penalty when forfeiture and other civil sanctions are applied to the same case.

The amendment in subsection (c) makes clear that civil forfeitures for CTR structuring offenses will continue to be covered by §981 of title 18, while civil forfeitures for CMIR offenses, including the new structuring offenses, will continue to be covered by §5317 of title 31.

SECTION 204

This amendment passed the House and Senate in 1990 as §13 of H.R. 5889 and §204 of S. 3037. It corrects an oversight in §6185(c) the Anti-Drug Abuse Act of 1988, which authorized the Secretary of the Treasury to issue orders directing financial institutions in certain geographic areas to collect additional information regarding cash transactions, by providing a penalty for the disclosure of such orders.

SECTION 205

Currently, section 1956 and 1957, the two principal money laundering statutes, contain different and possibly inconsistent definitions of the term "financial institution." Under §1957, a financial institution is any entity listed in 31 U.S.C. 5312. Under §1956, however, a financial institution is any entity listed in §5312 and the regulations promulgated by the Secretary of the Treasury pursuant to that statute. *See* 31 CFR §103.11(i) (1990). Moreover, it is unclear whether the reference to the regulations in §1956 is meant to limit the definition of "financial institution" to those entitles that are listed in *both* the statute (i.e. 31 U.S.C. §5312) *and* the regulations, or whether Congress intended to include any entity referred to in *either* the statute *or* the regulations.

The amendment eliminates this confusion first by using the same definition of "financial institution" for both §1956 and §1957, and second by making clear that the definition includes any entity referred to in either 31 U.S.C. §5312 or the regulations promulgated thereunder.

SECTION 206

Section 1402 of the Crime Control Act of 1990 made several purely technical corrections to the definition of "financial tranaction" in 18 U.S.C. §1956(c)(4). The present amendment makes several additional minor changes to clarify the scope of the statute.

The substantive part of the amendment expands the definition of "financial transaction" to cover the transfer of title to real property, automobiles, boats, airplanes and other conveyances. This closes a loophole in section 1956 which allows someone to escape prosecution under the money laundering statute if he or she conceals or disguises the proceeds of unlawful activity by transferring title to property without receiving any funds or monetary instruments in return.

The remaining provisions are purely technical in nature.

SECTION 207

Under current law, 18 U.S.C. 1510(b), it is a crime for any employee of a financial institution to disclose the contents of a grand jury subpoena for bank records where the subpoena is issued in the course of an investigation of certain crimes. The crimes covered by this obstruction of justice statute are listed in 18 U.S.C. 1510(b)(3)(B). The amendment expands the listed of covered offenses to include the federal money laundering statutes.

SECTION 208

This section is virtually identical to a provision that passed the Senate twice in the 101st Congress. *See* §701(a)(5) of S. 1711; §1901(a)(5) of S. 1970. It allows the Asset Forfeiture Fund to be used to pay awards for information relating to violations of the criminal money laundering laws. This amendment differs from the version that passed the Senate previously only in that includes violations of 31 U.S.C. §5316 (relating to CMIR reports) and 26 U.S.C. §6050I (relating to Form 8300 reports) within the list of money laundering offenses.

SECTION 209

This amendment is virtually identical to an amendment introduced by Senator Biden that passed the Senate as §2437 of S. 1970 in 1990. The amendment, which is modeled on the penalty provision for drug conspiracies in 21 U.S.C. §846, would make the penalty for money laundering conspiracy equivalent to the penalty for the substantive money laundering offense. The only difference between this provision and the Biden amendment is that this amendment would apply only to conspiracies and not to attempt offenses.

SECTION 210

This section includes two technical amendments passed by the Senate in 1990 as section 3722 of S. 1970. The first amendment conforms the language in sections 1956(a)(2) and (b) to amendments made by section 6471 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690. That amendment clarified the scope of section (a)(2) to make clear that it covered not only physical "transportation" of property, but also the "transmission or transfer" of property, such as the transmission of funds by wire. The present amendment inserts "transmission or transfer" at the appropriate places in subsections (a)(2) and (b) so that they conform grammatically to the statute as amended in 1988.

The second amendment strikes redundant language in the "sting" provision enacted by section 6465 of the Anti-Drug Abuse Act of 1988.

SECTION 211

In the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress amended 12 U.S.C. 3420 to prohibit a financial institution from notifying a customer of the existence of a grand jury subpoena for records naming such customer (or any information furnished in response to the subpoena) in any case involving a crime against any financial institution or supervisory agency. Other provisions of the Right to Financial Privacy Act exempt grand jury subpoenas from the Act's mandatory notice to customers provisions (12 U.S.C. 3413(i)), but except for the limited FIRREA amendment described above, the statute fails to prohibit a financial institution from voluntarily notifying a customer of the existence of a grand jury subpoena pertaining to his or her account. Such notification, of course, may alert a potential suspect of an investigation and permit the suspect to flee or conceal evidence. For that reason, the Act permits a prosecutor to obtain an order precluding such notification, upon certain showings, but the order is effective only for up to ninety days (see 12 U.S.C. 3409).

In drug and money laundering cases, the grand jury investigation is likely to be protracted and may involve numerous subpoenas for bank records. The administrative burdens in such cases imposed by the Act on overworked federal prosecutors to prepare the court papers necessary first to obtain, and then to secure extensions of, such preclusion-of-notice orders are unduly severe and unjustified. Accordingly, the amendment would expand the FIRREA addition of an automatic preclusion of notice to cover not only grand jury subpoenas for records relating to crimes against the financial institution, but also grand jury subpoenas for records relating to criminal investigations of the controlled substances and money laundering laws.

SECTION 212

This minor amendment merely incorporates the definition of property from 21 U.S.C. §853(b) (the drug forfeiture statute) into statute that governs money laundering forfeitures. Section 982 already incorporates virtually all of the other procedural and defi-

nitional sections of §853. The definition of property was left out of the statute as originally enacted in 1986 because at that time §982 only permitted forfeiture of commissions and fees paid to money launderers. In 1988, however, §982 forfeitures were expanded to include the property being laundered, proceeds traceable to that property, and property used to facilitate the laundering offense. *See United States* v. *All Monies*, 754 F. Supp. 1457 (D. Haw. 1991). In light of the 1988 amendment, the definition of property in §853(b) should be incorporated into §982. This conforms to the FIRREA forfeiture amendments of 1989 which incorporated the definition of property from §853(b) into §982(b)(1)(B) for FIRREA forfeitures.

The definition of property in §853(b) is as follows: "real property, including things growing on, affixed to, and found in land; and tangible and intangible personal property, including rights, privileges, interests, claims, and securities."

SECTION 213

At present, 18 U.S.C. §§1956(c)(7)(B) and 981(a)(1)(B) are co-extensive. The former makes foreign drug crimes in which a financial transaction occurs within the United States predicates for money laundering, while the later provides for civil forfeiture of the proceeds of such crimes if found in the United States. (Criminal forfeiture authority is automatically established under 18 U.S.C. §982(a)(1) for any offense under §1956.)

The proposal would expand the money laundering and civil forfeiture provisions described above so that they would also include the proceeds of foreign kidnappings, robberies, and extortions. The purpose is to make it more difficult for terrorists and other violent offenders to use the United States as a haven for the profits from their crimes.

SECTION 214

18. U.S.C. 981(e) governs the disposal of property forfeited by the Attorney General, the Secretary of the Treasury, or the Postal Service. The subsection provides, among other things, that the property may be retained, may be transferred to another federal agency, or may be transferred to a State or local law enforcement agency which participated directly in any of the acts which led to the forfeiture. The three federal departments or agencies are directed equitably to share the proceeds of forfeitures with such participating State and local law enforcement authorities.

Section 6469(b) of the Anti-Drug Abuse Act of 1988 added a sentence to 18 U.S.C. 981(e) which limited the authority of the Treasury Department and the Postal Service under that subsection to "property that has been administratively forfeited." No rationale for this limitation is stated and none is apparent. Prior to the 1988 Act, Treasury enjoyed the authority to dispose of property it seized irrespective of whether the property was later judicially forfeited in a proceeding conducted by the Attorney General. Possibly, the last sentence of subsection 981(e) was inserted because in some manner it was believed necessary to protect the litigating authority of the Attorney General. However, such litigating authority is not implicated by subsection 981(e), nor is there any other reason why Treasury and the Postal Service should not be able to dispose of property seized within their respective jurisdictions, as to which a judicial forfeiture proceeding is later brought. Accordingly, the amendment (which passed the Senate last year as §1911 of S. 1970) would repeal the last sentence of 18 U.S.C. 981(e) to give those agencies that authority.

SECTION 215

This section merely adds two additional criminal offenses to the list of "specified unlawful activity" in section 1956.

SECTION 301. AMENDMENTS TO THE BANK SECRECY ACT

Section (a). This technical amendment makes a change to the anti-structuring provision of the Bank Secrecy Act, 31 U.S.C. 5324, to specify that structuring transactions to avoid the $3000 identification requirement of 31 U.S.C. 5325 is prohibited.

By way of background, the anti-structuring provision of the Bank Secrecy Act, 31 U.S.C. 5324, prohibits structuring of transactions to avoid the currency reporting requirements of section 5313, *i.e.*, the $10,000 Currency Transaction Report requirement under 31 C.F.R. 103.22. In section 6185(b) of the Anti-Drug Abuse Act of 1988, Congress added section 5325 to further guard against the practice of "smurfing" drug proceeds by cash purchases of monetary instruments at amounts below the $10,000 reporting threshold. Section 5325 prohibits the cash purchase of certain monetary instruments—bank checks, cashier's checks, traveler's checks, money orders—in amounts greater than $3000 to non-account holders unless the financial institution verifies the identification of the purchaser. Treasury has issued regulations under section 5325, 31 C.F.R. 103.29, which require that financial institutions maintain a log of cash purchases of these instruments over $3000 which included a notation of the identification exacted for non-account holders.

Nevertheless, section 5324 only refers to structuring to avoid the Currency Transaction Report requirement. Therefore, the proposed amendment is needed because under the current law it could be argued that customer structuring of transactions or smurfing to avoid the $3000 identification requirement would not be a violation of the Bank Secrecy Act.

Section (b). This section contains provisions necessary to bring the financial enforcement program in the United States in conformity with the recommendations of the Financial Action Task Force ("FATF") on money laundering.

The FATF was convened by the 1989 G–7 Summit to study the state of international cooperation on money laundering and measures to improve cooperation in international money laundering cases. The group was composed of fifteen financial center countries and the European Community. After several meetings of experts from law enforcement, Justice and Finance Ministries, and bank supervisory authorities, in April 1990, the group issued a comprehensive report with 40 action recommendations for comprehensive domestic anti-money laundering programs and improved international cooperation in money laundering investigations, prosecutions, and forfeiture actions. The recommendations of the group have become the world model for effective anti-money laundering measures.

President Bush and the other heads of state and government endorsed the report of the Financial Action Task Force at the Houston Economic Summit in summer 1990, and the financial ministries of non-G–7 participants also endorsed the report. The Houston Summit reconvened the Task Force for another year. The mandate of the reconvened Task Force is to study possible complements to the original recommendations, to assess implementation of the recommendations, and to study how to expand the number of countries that subscribe to the recommendations. The reconvened Task Force is currently meeting. The original members have been joined by six other European countries and Hong Kong and the Gulf Cooperative Council.

By their endorsement, the Task Force members are committed to take necessary legislative and regulatory measures to implement the recommendations. Most of the countries are in the process of developing the necessary legislation. As can be expected, most of the recommendations reflect measures already in place in the United States because the United States was among the first countries to recognize the need for a comprehensive regulatory and legislative response to money laundering. Nevertheless, to fully measure up to the recommendations, our program requires some refinements which the amendments in this section address.

First, the Task Force recommendations (recommendation 9) provides that the same anti-money laundering measures recommended for banks be put in place for non-bank financial institutions, such as the requirement to report suspicious transactions possibly indicative of money laundering (recommendation 16) and to create anti-money laundering programs (recommendation 20). Our collective experience in the United States and abroad reflects that as banks become more effective in guarding against money laundering, money launderers turn to non-bank financial institutions, such as casas de cambio and telegraph companies. Many of these institutions are subject to the recordkeeping and reporting requirements of the Bank Secrecy Act, but unlike banks are not required to report suspicious transactions nor to have compliance programs to guard against money laundering. *See e.g.*, 12 C.F.R. 12.11 (relating to reports to suspected crimes by national banks); 12 C.F.R. 21.21 (relating to procedures for monitoring Bank Secrecy Act compliance by national banks).

Proposed section 31 U.S.C. 5318(g) authorizes the Secretary to require by regulation the reporting of suspicious transactions by any financial institution subject to the Bank Secrecy Act. Failure to report a suspicious transaction would subject the institution to the civil penalties of 31 U.S.C. 5321. It is anticipated that the Secretary would issue guidelines to assist financial institutions in identifying suspicious transactions.

Also in furtherance of the FATF recommendations, a financial institution, bank or non-bank, would be prohibited from warning its customer if it made a suspicious transaction report (recommendation 17). Under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. 3403(c), a financial institution may report a suspicious transaction free from civil liability for not notifying its customer, but is not specifically prohibited from warning the customer. The FATF concluded that in order for suspicious transactions reporting to be effective there must be a prohibition from notifying the persons involved in the suspicious transaction. Also, as discussed below, in a related amendment, it is proposed to extend the customer liability protection of the RFPA to all financial institutions subject to the Bank Secrecy Act, not just to the banking institutions generally subject to the RFPA.

Proposed section 31 U.S.C. 5318(h), which tracks the language of FATF recommendation 20, would authorize the Secretary to require financial institutions subject to the Bank Secrecy Act to have anti-money laundering programs which include, at a minimum, development of internal policies, pro-

cedures, and controls, designation of a compliance officer, an ongoing employee training program, and an independent audit function to test the program. The Secretary would be able to promulgate minimum standards for such procedures.

This recommendation was based on the regulations the U.S. bank regulators have in place pursuant to 12 U.S.C. 1818 to ensure Bank Secrecy Act compliance. *See e.g.*, 12 C.F.R. 21.21. The Secretary already has authority under 31 U.S.C. 5318 to promulgate procedures to issue procedures to ensure compliance with requirements of the Bank Secrecy Act. This amendment would eliminate the requirement that the procedures be linked to a Bank Secrecy Act requirement, i.e., currency transaction reporting. The procedures would be geared at money laundering generally whether or not a customer dealt in cash. For instance, this authority could be used to require that anti-money laundering programs include "know your customer" procedures.

The Department of the Treasury envisions that the authority of proposed sections 5318(g) and (h) could be used with respect to any institution subject to the Bank Secrecy Act under 31 U.S.C. 5312 whether or not that institution is required to report currency transactions under the Bank Secrecy Act.

The amendments in sections (d) through (h) specify that persons who cause financial institutions to maintain false or incomplete records in contravention of the Bank Secrecy Act recordkeeper requirement would themselves be subject to civil sanctions. Currently, the Bank Secrecy Act recordkeeping civil penalties apply only to the financial institution required to maintain the record. (Criminal penalties already apply to persons causing such violations pursuant to 31 U.S.C. §§5322 and 5324(1) and (2), and 18 U.S.C. §2.) The penalties do not apply to a customer who caused a financial institution to maintain a false or incomplete record. As Treasury refines its recordkeeping requirements, *e.g.*, the proposal for enhanced funds transfer records, this may become a loophole in the statutory framework. The amendments in sections 1 (d) through (h) would cure this problem for records required under the general recordkeeping authority for insured financial institutions (12 U.S.C. 1829b), nonbank financial institutions (12 U.S.C. 1951–1959), and requirements promulgated pursuant to 31 U.S.C. 5314 (foreign financial agency records).

SECTION 302. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT

Section (a). Since the inception of the Right to Financial Privacy Act, pursuant to an exception in section 1103(c), 12 U.S.C. 3404(c), financial institutions have been able to report, in good faith, possible violations of law or regulation to federal authorities without notice to the suspected customer and free from civil liability under the RFPA. At the Administration's request in the Anti-Drug Abuse Act of 1986 and 1988, Congress further clarified this provision to specify what information a financial institution could give regarding the customer and the suspicious activity, and that the protection preempted any state law requiring notice to the customer. These changes were added to ensure that financial institutions would not be inhibited from reporting suspected violations, especially money laundering and Bank Secrecy Act reporting violations.

Nevertheless, banks have advised that there are other concerns beyond liability under privacy laws that in some instances complicate their treatment of suspicious transactions. For instance, they fear possible defamation actions or that if they sever relations with a customer, they may risk liability under the Fair Credit Reporting Act, 15 U.S.C. 1691, *et seq.*, or for breach of contract. *See Ricci* v. *Key Bancshares of Maine*, 768 F.2d 456 (1st Cir. 1985). However, if they continue relations with the customers, they fear that they may be implicated in any illegal activity.

In many cases, after a suspicion has been reported, Federal authorities will encourage financial institutions to continue dealing with a suspicious customer so his activities may be monitored. Unfortunately, in other cases, law enforcement authorities do not always follow-up with financial institutions on the disposition of suspicious activity reports. In any event, financial institutions should be free to sever relations with the customer based on their suspicions or on information about a customer received from law enforcement.

Section (a) addresses these concerns by extending the protection of section 1103(c) to a financial institution that severs relations with a customer or refuses to do business because of activities underlying a suspicious transaction report and by specifying that the financial institution that acts in good faith in reporting a suspicious transaction is protected from civil liability to the customer under any theory of state or Federal law.

This amendment also broadens the protection of section 1103(c) to the wide range of bank and non-bank institutions subject to the Bank Secrecy Act, 31 U.S.C. 5312, to the extent that these institutions are required to file suspicious transaction reports. Currently, the protection from civil liability may apply to financial institutions as defined in section 1101 of the RFPA (12 U.S.C. 3401), *e.g.*, banks credit unions, savings associations. Non-bank institutions which are required to file suspicious transaction reports may similarly be inhibited from reporting suspicious transactions by fear of civil liability for defamation or breach of contract or under financial or consumer privacy laws.

Under this proposal, the protection from civil liability would apply to any institution enumerated in 31 U.S.C. 5312 if the Secretary has exercised his regulatory authority under proposed 31 U.S.C. 5318(g) (Section _____ of this bill) by requiring that type of institution to file a report on suspicious transactions. Thus, if an institution such as check casher, securities broker, or foreign currency exchange, which is not categorized as a "financial institution" under the RFPA, but is categorized as such under 31 U.S.C. 5312 and the implementing regulations, and is required by regulation to file a suspicious transaction report, will be free from customer liability based on the suspicious transaction report.

Section (b). Section 1112 of the RFPA, 12 U.S.C. 3412, provides that agencies that obtain financial records in accordance with the RFPA (either after customer notice or pursuant to an authorized notice exception) notify a customer if it transfers the records to another agency.

The amendment in section (b) is necessary to facilitate the work of Treasury's new Financial Crimes Enforcement Network (FinCEN). FinCEN plans not only to analyze financial records, including records subject to the RFPA, *e.g.*, records received by administrative subpoena, to facilitate investigations and prosecution by non-Treasury agencies, but to integrate such records with other available records for further analysis to indentify new targets for criminal investigation. Treasury is concerned that this further use, independent of the needs of the agency that originally received the records in accordance with the RFPA, could be considered as a transfer of the records to Treasury necessitating customer notice under section 1112 of the RFPA.

The amendment adds a new subsection 1112(g) to provide that an agency can transfer records obtained in accordance with the RFPA to FinCEN for criminal law enforcement purposes without customer notice. FinCEN also would be able to disseminate the results of its analysis, whether based in whole or in part on records obtained subject to the RFPA, to the appropriate agency for criminal investigation without customer notice.

MOYNIHAN (AND SANFORD) AMENDMENT NO. 523

(Ordered to lie on the table.)

Mr. MOYNIHAN (for himself and Mr. SANFORD) proposed an amendment to the bill S. 1241, supra, as follows:

At the end of the bill add the following:

SEC. 2704. COMPLIANCE WITH STATE AND LOCAL FIREARMS LICENSING LAWS REQUIRED BEFORE ISSUANCE OF FEDERAL LICENSE TO DEAL IN FIREARMS.

(a) IN GENERAL.—Section 923(d)(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) in the case of an application for a license to engage in the business of dealing in firearms—

"(i) the applicant has complied with all requirements imposed on persons desiring to engage in such a business by the State and political subdivision thereof in which the applicant conducts or intends to conduct such business; and

"(ii) the applicant has verified such compliance in a form and manner prescribed by the Secretary.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to applications for licenses that are submitted 90 or more days after the date of the enactment of this Act.

MOYNIHAN AMENDMENTS NOS. 524 AND 525

(Ordered to lie on the table.)

Mr. MOYNIHAN submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 524

At the end of the bill add the following:

SEC. 2704. PROHIBITION OF MANUFACTURE, IMPORTATION, OR TRANSFER OF CERTAIN TYPES OF AMMUNITION.

(a) UNLAWFUL ACTS.—Section 922(a) of title 18, United States Code, is amended by—

(1) striking "and" at the end of paragraph (7);

(2) striking the period at the end of paragraph (8) and inserting a semicolon; and

(3) adding at the end thereof the following new paragraphs:

"(9) for any person to manufacture, import, or transfer .25 or .32 caliber or 9 milli-

meter ammunition, except that this paragraph shall not apply to—

"(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof; and

"(B) any manufacture or importation for testing or for experimenting authorized by the Secretary; and

"(10) for any manufacturer or importer to sell or deliver .25 or .32 caliber or 9 millimeter ammunition, except that this paragraph shall not apply to—

"(A) the sale or delivery by a manufacturer or importer of such ammunition for the use of the United States or any department or agency thereof of any State or any department, agency, or political subdivision thereof; and

"(B) the sale or delivery by a manufacturer or importer of such ammunition for testing or for experimenting authorized by the Secretary.".

(b) LICENSING.—Section 923 of title 18, United States Code, is amended—

(1) in subsection (a) by—

(A) amending paragraph (a)(A) to read as follows:

"(A) of destructive devices, ammunition for destructive devices, armor piercing ammunition, or .25 or .32 caliber or 9 millimeter ammunition, a fee of $1,000 per year;";

(B) amending paragraph (1)(C) to read as follows:

"(C) ammunition for firearms other than destructive devices, or armor piercing or .25 or .32 caliber or 9 millimeter ammunition for any firearm, a fee of $10 per year."; and

(C) amending paragraph (2) to read as follows:

"(2) If the applicant is an importer—

"(A) of destructive devices, ammunition for destructive devices, or armor piercing or .25 or .32 caliber or 9 millimeter ammunition for any firearm, a fee of $1,000 per year; or

"(B) of firearms other than destructive devices or ammunition for firearms other than destructive devices, or ammunition other than armor piercing or .25 or .32 caliber or 9 millimeter ammunition for any firearm, a fee of $50 per year."; and

(2) by adding at the end thereof the following new subsection:

"(1) Licensed importers and licensed manufacturers shall mark all .25 and .32 caliber and 9 millimeter ammunition and packages containing such ammunition for distribution, in the manner prescribed by the Secretary by regulation.".

(c) USE OF RESTRICTED AMMUNITION.—Section 929 of title 18, United States Code, is amended—

(1) in subsection (a)(1) by inserting ", or .25 or .32 caliber or 9 millimeter ammunition" after "possession of armor piercing ammunition"; and

(2) in subsection (b) by inserting ", or .25 or .32 caliber or 9 millimeter ammunition," after "armor piercing ammunition".

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first calendar month that begins more than 90 days after the date of enactment of this Act.

AMENDMENT NO. 525

At the end of the bill add the following:

SEC. 2704. RECORDS OF DISPOSITION OF AMMUNITION.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Section 923(g) of title 18, United States Code, is amended—

(1) in paragraph (1)(A) by inserting after the second sentence "Each licensed importer and manufacturer of ammunition shall maintain such records of importation, production, shipment, sale, or other disposition of ammunition at his place of business for such period and in such form as the Secretary may by regulations prescribe. Such records shall include the amount, caliber, and type of ammunition."; and

(2) by adding at the end thereof the following new paragraph:

"(6) Each licensed importer or manufacturer of ammunition shall annually prepare a summary report of imports, production, shipments, sales, and other dispositions during the preceding year. The report shall be prepared on a form specified by the Secretary, shall include the amounts, calibers, and types of ammunitions that were disposed of, and shall be forwarded to the office specified thereon not later than the close of business on the date specified by the Secretary.".

(c) STUDY OF CRIMINAL USE AND REGULATION OF AMMUNITION.—The Secretary of the Treasury shall request the National Academy of Sciences to—

(1) prepare, in consultation with the Secretary, a study of the criminal use and regulation of ammunition; and

(2) to submit to Congress, not later than July 1, 1993, a report with recommendations on the potential for preventing crime by regulating or restricting the availability of ammunition.

LAUTENBERG AMENDMENT NO. 526

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

On page 170, line 9, add immediately after the word "housing" the following: "or federally assisted low income housing".

On page 171, line 4, add immediately after the word "housing" the following: "or federally assisted low income housing".

DOLE AMENDMENT NO. 527

(Ordered to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place add:

SEARCH OF OUTBOUND MAIL.

Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b)(1) For purposes of ensuring compliance with the requirements of section 5316 of this title or of sections 1956 and 1957 of title 18, United States Code, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container (including mail transmitted by the United States Postal Service that is not sealed against inspection or that has a customs declaration affixed by the sender) and any person entering or departing the United States.

"(2) Notwithstanding section 3623(d) or any other provision of title 39, United States Code, with respect to a letter sealed against inspection that is being transmitted by the United States Postal Service, a search authorized by paragraph (1) may be conducted when a customs officer has reasonable cause to suspect that there are monetary instruments being transported in the letter.

"(3) Nothing in this section shall be construed to limit the authority of the Secretary of the Treasury or the United States Customs Service under any other law.".

MCCONNELL AMENDMENT NO. 528

(Ordered to lie on the table.)

Mr. MCCONNELL submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the end of the bill, add the following:

TITLE —PUBLIC CORRUPTION

SEC. 01. SHORT TITLE.

This title may be cited as the "Anti-Corruption Act of 1991".

SEC. 02. OFFENSE.

Chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 226. Public corruption

"(a) Whoever, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of such State, or political subdivision of a State, shall be fined under this title, or imprisoned for not more than 10 years, or both.

"(b) Whoever, in a circumstances described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, runoff, special, or general election—

"(1) through the procurement, casting, or tabulation of ballots that are materially false, fictitious, or fraudulent or that are invalid, under the laws of the State in which the election is held;

"(2) through paying or offering to pay any person for voting;

"(3) through the procurement of submission of voter registrations that contain false material information, or omit material information; or

"(4) through the filing of any report required to be filed under State law regarding an election campaign that contains false material information or omits material information, shall be fined under this title or imprisoned for not more than ten years, or both.

"(c) Whoever, being a public official or an official or employee of a State, or political subdivision of a State, in a circumstance described in subsection (d), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the right to have the affairs of the State or political subdivision conducted on the basis of complete, true, and accurate material information, shall be fined under this title or imprisoned for not more than ten years, or both.

"(d) The circumstances referred to in subsections (a), (b), and (c) are that—

"(1) for the purpose of executing or concealing such scheme or artifice or attempting to do so, the person so doing—

"(A) places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(B) transmits or causes to be transmitted by means of wire, radio, or television com-

munication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(C) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(D) uses or causes to use of any facility of interstate or foreign commerce;

"(2) the scheme or artifice affects or constitutes an attempt to affect in any manner or degree, or would if executed or concealed so affect, interstate or foreign commerce; or

"(3) as applied to an offense under subsection (b), an objective of the scheme or artifice is to secure the election of an official who, if elected, would have some authority over the administration of funds derived from an Act of Congress totaling $10,000 or more during the 12-month period immediately preceding or following the election or date of the offense.

"(e) Whoever deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of the United States of the honest service of a public official or person who has been selected to be a public official shall be fined under this title or imprisoned for not more than 10 years, or both.

"(f) Whoever being an official, or public official, or person who has been selected to be a public official, directly or indirectly, discharges, demotes, suspends, threatens, harasses, or, in any manner, discriminates against any employee or official of the United States or any State or political subdivision of such State, or endeavors to do so, in order to carry out or to conceal any scheme or artifice described in this section, shall be fined under this title or subject to imprisonment of up to 5 years or both.

"(g)(1) Any employee or official of the United States or any State or political subdivision of such State who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done by the employee as a result of a violation of subsection (e) or because of actions by the employee on behalf of himself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may in a civil action, obtain all relief necessary to make such individuals whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 3 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including reasonable litigation costs and reasonable attorney's fees.

"(2) An individual is not eligible for such relief if that individual participated in the violation of this section with respect to which such relief would be awarded.

"(3) A civil action or proceeding authorized by this subsection shall be stayed by a court upon the certification of an attorney for the Government, stating that such action or proceeding may adversely affect the interests of the Government in an ongoing criminal investigation or proceeding. The attorney for the Government shall promptly notify the court when the stay may be lifted without such adverse effects.

"(h) For purposes of this section—

"(1) the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States;

"(2) the terms 'public official' and 'person who has been selected to be a public official' have the meaning set forth in section 201 of this title; the terms 'public official' and 'person who has been selected to be a public official' shall also include any person acting or pretending to act under color of official authority;

"(3) the term 'official' includes—

"(A) any person employed by, exercising any authority derived from, or holding any position in the government of a State or any subdivision of the executive, legislative, judicial, or other branch of government thereof, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(B) any person acting or pretending to act under color of official authority; and

"(C) includes any person who has been nominated, appointed or selected to be an official or who has been officially informed that he or she will be so nominated, appointed or selected;

"(4) the term 'under color of official authority' includes any person who represents that he or she controls, is an agent of, or otherwise acts on behalf of an official, public official, and person who has been selected to be a public official; and

"(5) the term 'uses any facility of interstate or foreign commerce' includes the intrastate use of any facility that may also be used in interstate or foreign commerce.".

SEC. 03. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end thereof the following item:

"226. Public Corruption.".

(b) RICO.—Section 1961(1) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(c) INTERRUPTION OF COMMUNICATIONS.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 04. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended by—

(1) striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce"; and

(2) inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(b) CONFORMING AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended by striking "Fraud by wire, radio, or television" and inserting "Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by striking the analysis for section 1343 and inserting the following:

"1343. Fraud by use of facility of interstate commerce.".

SEC. 05. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) IN GENERAL.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption

"(a) Any public official who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State;

shall be guilty of a class B felony.

"(b) Any person who, directly or indirectly, corruptly gives, offers, or promises anything of value of any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence such public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence such public official to do or to omit to do any act in violation of such official's lawful duty;

shall be guilty of a class B felony.

"(c) There shall be Federal jurisdiction over an offense described in this section if such offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) For the purpose of this section—

"(1) the term 'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; or

"(D) any person who has been nominated or appointed to be a public official as defined in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed;

"(2) the term 'official act' means any decision, action, or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit; and

"(3) the terms 'controlled substance' and 'controlled substance analogue' have the meaning set forth in section 102 of the Controlled Substances Act.".

(b) CONFORMING AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),".

(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 11 of title 18, United States Code, is amended by inserting after the item for section 219 the following:

"220. Narcotics and public corruption.".

AMENDMENT NO. 530

At the appropriate place in the bill, insert the following:

SEC. . REGIONAL VIOLENT CRIME ASSISTANCE.

The Omnibus Crime and Safet Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended—

(1) by amending section 511 to read as follows:

"ALLOCATION OF FUNDS FOR GRANTS

"(a) SPECIAL DISCRETIONARY FUNDS.—Of the total amount appropriated for this part (other than chapter B of this subpart) in any fiscal year—

"(1) if that amount is $250,000,000 or less, 20 percent shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 503;

"(2) if that amount is greater than $250,000,000 but less than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) 20 percent of the excess over $250,000,000 shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 513; and

"(3) if that amount is greater than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (2)(B).

"(b) AMOUNT OF GRANTS.—Grants under this section may be made for amounts up to 100 percent of the costs of the programs or projects contained in the approved application.";

(2) in section 512 by inserting "for purposes specified in section 503" after "section 511"; and

(3) by inserting after section 512 the following new section:

"REGIONAL VIOLENT CRIME ASSISTANCE

"(a) PURPOSES OF GRANTS.—The Director may make a grant to a public agency for the purposes of—

"(1) enhancing law enforcement and criminal justice systems in regions that suffer from high rates of violent crime or fact particular violent crime problems that warrant Federal assistance; and

"(2) developing and implementing multijurisdictional strategies to respond to and prevent violent crime.

"(b) AMOUNT.—(1) No grantee under subsection (a) shall receive a grant exceeding $10,000,000.

"(c) CONSIDERATIONS IN AWARDING GRANTS.—(1) In awarding grants under subsection (a), the Director may give priority to—

"(A) applicants from or near jurisdictions with high rates of violent crime; and

"(B) applicants that propose to develop a multijurisdictional or regional approach to respond to or prevent violent crime.

"(2) The Director shall not limit grants under subsection (a) to highly populated centers of violent crime, but shall give due consideration to applications from less populated regions where the magnitude and severity of violent crime warrants Federal assistance.

"(3) The Director shall not limit grants under subsection (a) to the enhancement of law enforcement capabilities, but shall give due consideration to applications that propose to use funds for the improvement of the criminal justice system in general.".

RIEGLE AMENDMENT NOS. 529 AND 530

(Ordered to lie on the table.)

Mr. RIEGLE submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT No. 529

At the appropriate place in the bill, insert the following:

SEC. —. REGIONAL VIOLENT CRIME ASSISTANCE.

The Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended—

(1) by amending section 511 to read as follows:

"ALLOCATION OF FUNDS FOR GRANTS

"(a) SPECIAL DISCRETIONARY FUNDS.—Of the total amount appropriated for this part (other than chapter B of this subpart) in any fiscal year—

"(1) if that amount is $250,000,000 or less, 20 percent shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 503;

"(2) if that amount is greater than $250,000,000 but less than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) 20 percent of the excess over $250,000,000 shall be reserved and set aside for this section in a special discretionary fund for use by the Director in carrying out the purposes specified in section 513; and

"(3) if that amount is greater than $500,000,000—

"(A) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (1); and

"(B) $50,000,000 shall be reserved and set aside for this section in the special discretionary fund described in paragraph (2)(B)

"(b) AMOUNT OF GRANTS.—Grants under this section may be made for amounts up to 5 percent of the costs of the programs or projects contained in the approved application.";

(2) in section 512 by inserting "for purposes specified in section 503" after "section 511"; and

(3) by inserting after section 512 the following new section:

"REGIONAL VIOLENT CRIME ASSISTANCE

"(a) PURPOSES OF GRANTS.—The Director may make a grant to a state agency for the purposes of—

"(1) enhancing law enforcement and criminal justice systems in regions that suffer from high rates of violent crime or face particular violent crime problems that warrant Federal assistance; and

"(2) developing and implementing multijurisdictional strategies to respond to and prevent violent crime.

"(b) AMOUNT.—(1) No grantee under subsection (a) shall receive a grant exceeding $10,000,000.

"(c) CONSIDERATIONS IN AWARDING GRANTS.—(1) In awarding grants under subsection (a), the Director may give priority to—

"(A) states that develop and implement plans to assist law enforcement and criminal justice authorities from or near jurisdictions with high rates of violent crime; and

"(B) States that propose to develop a multijurisdictional or regional approach to respond to or prevent violent crime.

"(2) The Director shall not limit grants under subsection (a) to highly populated centers of violent crime, but shall give due consideration to applications from less populated regions where the magnitude and severity of violent crime warrants Federal assistance.

"(3) The Director shall not limit grants under subsection (a) to the enhancement of law enforcement capabilities, but shall give due consideration to applications that propose to use funds for the improvement of the criminal justice system in general.".

LEVIN AMENDMENT NO. 531

(Ordered to lie on the table.)

Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

Amend subsection (a) of section 202 of title II dealing with the Special Hearing to Determine Whether a Sentence of Death is Justified (section 3593), with respect to the Return of a Finding Concerning a Sentence of Death (subsection e) to strike the following sentence:

"Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether a sentence of death shall be imposed rather than a lesser sentence."

And insert in lieu thereof the following:

"Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall determine whether a sentence of death shall be imposed rather than a lesser sentence."

HATCH AMENDMENT NOS. 532 AND 533

(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT NO. 532

At the appropriate place, add the following:

SEC. . (a) Notwithstanding any other provision of law or regulation, no Federal department or agency may—

(1) revoke a contract for the sale of any federally owned building or facility to any nonprofit organization, except for cause; or

(2) revoke a grant or loan awarded to any recipient for the purpose of purchasing a building or facility intended for a bona fide community purpose, except for cause.

(b) For purposes of this section, the term "cause" means evidence of illegal activity by the nonprofit organization or recipient of Federal funds, evidence of illegal activity taking place at the site, default on payments required as a condition of the purchase; or a breach of the terms and conditions governing the use of the building or facility.

(c) This section shall apply to any action taken by a federal department or agency to revoke a contract, grant, or loan after December 31, 1987.

AMENDMENT NO. 533

At the appropriate place, insert the following:

In 28 U.S.C. Section 519, designate the current matter as subsection '(a)' and add the following:

(b) AWARD OF FEES.—

(1) CURRENT EMPLOYEES.—Upon the application of any current employee of the De-

partment of Justice who was the subject of a criminal or disciplinary investigation instituted on or after the date of enactment of this Act by the Department of Justice, which investigation related to such employee's discharge of his or her official duties, and which investigation resulted in neither disciplinary action nor criminal indictment against such employee, the Attorney General shall award reimbursement for reasonable attorney's fees incurred by that employee as a result of such investigation.

(2) FORMER EMPLOYEES.—Upon the application of any former employee of the Department of Justice who was the subject of a criminal or disciplinary investigation instituted on or after the date of enactment of this Act by the Department of Justice, which investigation related to such employee's discharge of his or her official duties, and which investigation resulted in neither disciplinary action nor criminal indictment against such employee, the Attorney General shall award reimbursement for those reasonable attorney's fees incurred by that former employee as result of such investigation.

(3) EVALUATION OF AWARD.—The Attorney General may make an inquiry into the reasonableness of the sum requested. In making such inquiry the Attorney General shall consider:

(A) the sufficiency of the documentation accompanying the request;

(B) the need or justification for the underlying item;

(C) the reasonableness of the sum requested in light of the nature of the investigation; and

(D) current rates for legal services in the community in which the investigation took place.

THURMOND AMENDMENT NO. 534

(Ordered to lie on the table.)

Mr. THURMOND submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

In title VIII, strike "4 years" wherever it appears and insert "8 years".

SIMPSON AMENDMENT NO. 535

(Ordered to lie on the table.)

Mr. SIMPSON submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following new section:

SEC. . SPECIAL REMOVAL OF TERRORIST ALIENS.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 242B the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

"(1) the term 'alien terrorist' means any alien likely to engage in activity described in section 241(a)(4) (A)(iii) or (B), except for—

"(A) an alien who commits an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

"(i) The preparation or planning of a terrorist activity;

"(ii) The gathering of information on potential targets for terrorist activity;

"(iii) The providing of any type of material support, including a safe house, transportation, communications, funds, false identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit an act of terrorist activity;

"(iv) The soliciting of funds or other things of value for terrorist activity or for any terrorist organization;

"(v) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorist activity; and

"(B) an alien who has been present for at least seven years as a lawful permanent resident alien, and who has either a spouse, child or parent who is a United States citizen;

"(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(4) the term 'special court' means the court described in subsection (c) of this section; and

"(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

"(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

"(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

"(2) an alien terrorist is physically present in the United States; and

"(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would—

"(A) disclose classified information;

"(B) disclose a confidential source of information; or

"(C) reveal an investigative technique important to efficient law enforcement.

"(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to seven judges from up to seven United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

"(2) The Chief Justice may, in his discretion, designate the same judges under this section as are designated pursuant to section 103(a) of the Foreign Intelligence Surveillance Act of 1978.

"(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

"(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified;

"(B) a deportation proceeding described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would—

"(i) disclose classified information;

"(ii) disclose a confidential source of information; or

"(iii) reveal an investigative technique important to efficient law enforcement; and

"(C) the alien poses an immediate threat of death or serious bodily harm toward either—

"(i) a substantial number of persons in the United States or on board a common carrier departing the United States, or

"(ii) a citizen of the United States who holds public office or is otherwise of political significance.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

"(3) The alien shall have—

"(A) a right to introduce evidence on his own behalf; and

"(B) except as provided in paragraph (4), a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would—

"(A) disclose classified information;

"(B) disclose a confidential source of information; or

"(C) reveal an investigative technique important to efficient law enforcement.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove; or

"(ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6)(A) If the judge determines that the substituted evidence described in paragraph (5)(A) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, then

"(i) such evidence shall be disclosed to the alien, and

"(ii) the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(B) If the judge determines that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person who is the source of the information, then the determination of deportation (described in subsection (f)) may be made pursuant to this section: *Provided*, That the judge makes the finding described in subparagraph (C).

"(C) For purposes of subparagraph (B), the judge shall issue a written statement finding that the alien's constitutional due process rights have been respected, including consideration of the following factors:

"(i) the alien's interest in remaining in the United States,

"(ii) whether the government has a compelling interest in not disclosing even the substituted evidence described in paragraph (5)(A), and

"(iii) whether the risk of an erroneous decision regarding deportability is low even if

the substitute evidence described in paragraph (5)(A) is not disclosed.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(5)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under such subsection.

"(2)(A) The Attorney General may appeal a determination under subsection (d), subsection (e), or subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

"(B) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. If the Attorney General is appealing a determination under subsection (d) or (e), the court of appeals shall consider such appeal in camera and ex parte.".

SEYMOUR AMENDMENTS NOS. 536 AND 537

(Ordered to lie on the table.)

Mr. SEYMOUR submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT No. 536

At the end of the bill, insert the following:

TITLE —EXPLOITATION OF ALIENS

SEC. 01. SHORT TITLE.

This title may be cited as the "Exploitation of Aliens Act of 1991".

SEC. 02. EXPLOITATION OF ALIENS.

(a) INDUCEMENT OF ALIENS.—A person who is 18 years of age or older who voluntarily solicits, counsels, encourages, commends, intimidates, or procures any alien with the intent that the alien commit an aggregated felony, as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), shall be subject to a civil fine of not more than $100,000.

(b) COMMISSION OF CRIME BY ALIEN.—An alien who is induced by another person to commit and subsequently commits an aggravated felony, as defined in section 101(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), shall be subject to a civil fine of not more than $100,000.

(c) CONSIDERATIONS.—In imposing a fine under subsection (a) or (b), the court shall consider the severity of the offense sought or committed by the offender as a circumstance in aggravation.

(d) ENFORCEMENT.—(1) A proceeding for assessment of a civil fine under subsection (a) or (b) may be brought in the first instance—

(A) in a civil action before a United States district court; or

(B) in an administrative proceeding before an administrative law judge in accordance with section 554 of title 5, United States Code.

(2) A decision and order of an administrative law judge under paragraph (1)(B) shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order.

(3) A person affected by a final order under this subsection may, not later than 45 days after the date on which the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(4)(A) If a person found in violation of subsection (a) or (b) fails to comply with a final order issued by a circuit court or administrative law judge, the Attorney General may bring a civil action to seek compliance with the order in any appropriate district court of the United States.

(B) In a civil action under subparagraph (A), the validity and appropriateness of the final order shall not be subject to review.

SEC. 03. CRIMINAL ALIEN IDENTIFICATION AND REMOVAL FUND.

(a) ESTABLISHMENT.—(1) There is established in the Treasury of the United States the Criminal Alien Identification and Removal Fund (referred to as the "Fund").

(2) All fines collected pursuant to section 02 shall be covered into the Fund and shall be used for the purposes of this section.

§ 03(b)(1) to read as follows:

"(b) DISTRIBUTION OF MONIES IN THE FUND.—(1) Ninety percent of the monies covered into in the fund in any fiscal year may be used by the Attorney General—

"(A) to assist the Immigration and Naturalization Service to identify, investigate, apprehend, detain, and deport aliens who have committed an aggravated felony, and

"(B) to fund any of the 20 additional immigration judge positions authorized by section 512 of the Immigration Act of 1990 which have not been funded.".

(2) Ten percent of the monies covered into the fund in any fiscal year may be distributed in the form of grants to the States by the Attorney General for the purposes of—

(A) assisting the States in implementing section 503(a)(11) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(11));

(B) expanding section 503(a)(11) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)(11)) to identify aliens—

(i) as they are processed for admission into State prisons; and

(ii) when they enter probation programs.

(c) TECHNICAL AMENDMENT.—Section 280(b)(1) of the Immigration and Nationality Act is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

AMENDMENT No. 537

At the appropriate place insert the following:

SEC. . PENALTIES FOR PARTICIPATION IN GANG ACTIVITY.

(a) Any person who willfully promotes, furthers, or assists in any felonius criminal conduct by the members of a criminal gang with knowledge that its members engage or have engaged in a pattern of criminal gang activity, shall be imprisoned not less than one year and not more than three years, except as provided in subsection (b) of this section.

(b) Whoever is convicted of an offense against the United States, which is committed knowingly for the benefit of, at the direction of, or in association with any criminal gang shall be, except in the circumstances described in paragraph (2) of this section, imprisoned in addition and consecutive to the punishment prescribed for the offense, or attempted offense, not less than three and not more than seven years.

(2) Any person who is convicted of an offense that results in serious bodily injury shall be imprisoned in addition and consecutive to the punishment prescribed for the offense, or attempted offense, not less than seven and not more than twelve years.

(c) As used in this section—

(1) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(2) the term "criminal gang" means a criminal syndicate of three or more persons that is commonly known by a certain name or identifier that engages in or has as one of its purposes engaging in offenses involving

(i) assault, homicide, firearms, explosives, robbery, and burglary, extortion, fraud, and witness intimidation, as defined in this title, or

(ii) possession, possession for sale, sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in the Controlled Substances Act.

KENNEDY (AND OTHERS) AMENDMENT NO. 538

Mr. KENNEDY (for himself, Mr. HATCH, Mr. BIDEN, Mr. D'AMATO, Mr. DECONCINI, Mr. SPECTER, Mr. GRAHAM, and Mr. KERRY) proposed an amendment to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . USE OF UNOBLIGATED FUNDS FROM CUSTOMS FORFEITURE FUND.

Section 613A(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1613b(f)(3)) is amended by striking "in excess of" and all that follows through the period and inserting "remaining in the Fund shall be utilized as follows:

"(i) The first $15,000,000 shall remain in the Fund.

"(ii) The next $30,000,000 shall be transferred to the Department of Health and Human Services and expended for drug treatment through grant programs set forth in titles V or XIX of the Public Health Services Act.

"(iii) Any remaining money shall be deposited into the general fund of the Treasury of the United States.".

KOHL AMENDMENT NOS. 539 AND 540

(Ordered to lie on the table.)

Mr. KOHL submitted two amendments intended to be proposed by him to the bill S. 1241, supra, as follows:

AMENDMENT No. 539

At the appropriate place, insert the following:

SEC. . DEPARTMENT OF JUSTICE COMMUNITY SUBSTANCE ABUSE PREVENTION ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "Department of Justice Community Substance Abuse Prevention Act of 1991".

(b) COMMUNITY PARTNERSHIPS.—Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end thereof the following:

"Subpart 4—Community Coalitions on Substance Abuse

"GRANTS TO COMBAT SUBSTANCE ABUSE

"SEC. 531. (a) DEFINITION.—As used in this section, the term 'eligible coalition' means an association, consisting of at least seven organizations, agencies, and individuals that are concerned about preventing substance abuse, that shall include—

"(1) public and private organizations and agencies that represent law enforcement, schools, health and social service agencies, and community-based organizations; and

"(2) representatives of 3 of the following groups: the clergy, academia, business, parents, youth, the media, civic and fraternal groups, or other nongovernmental interested parties.

"(b) GRANT PROGRAM.—The Attorney General, acting through the Director of the Bureau of Justice Assistance, and the appropriate State agency, shall make grants to eligible coalitions in order to—

"(1) plan and implement comprehensive long-term strategies for substance abuse prevention;

"(2) develop a detailed assessment of existing substance abuse prevention programs and activities to determine community resources and to identify major gaps and barriers in such programs and activities;

"(3) identify and solicit funding sources to enable such programs and activities to become self-sustaining;

"(4) develop a consensus regarding the priorities of a community concerning substance abuse;

"(5) develop a plan to implement such priorities; and

"(6) coordinate substance abuse services and activities, including prevention activities in the schools or communities and substance abuse treatment programs.

"(c) COMMUNITY PARTICIPATION.—In developing and implementing a substance abuse prevention program, a coalition receiving funds under subsection (b) shall—

"(1) emphasize and encourage substantial voluntary participation in the community, especially among individuals involved with youth such as teachers, coaches, parents, and clergy; and

"(2) emphasize and encourage the involvement of businesses, civic groups, and other community organizations and members.

"(d) APPLICATION.—An eligible coalition shall submit an application to the Attorney General and the appropriate State agency in order to receive a grant under this section. Such application shall—

"(1) describe and, to the extent possible, document the nature and extent of the substance abuse problem, emphasizing who is at risk and specifying which groups of individuals should be targeted for prevention and intervention;

"(2) describe the activities needing financial assistance;

"(3) identify participating agencies, organizations, and individuals;

"(4) identify the agency, organization, or individual that has responsibility for leading the coalition, and provide assurances that such agency, organization or individual has previous substance abuse prevention experience;

"(5) describe a mechanism to evaluate the success of the coalition in developing and carrying out the substance abuse prevention plan referred to in subsection (b)(5) and to report on such plan to the Attorney General on an annual basis; and

"(6) contain such additional information and assurances as the Attorney General and the appropriate State agency may prescribe.

"(e) PRIORITY.—In awarding grants under this section, the Attorney General and the appropriate State agency shall give priority to a community that—

"(1) provides evidence of significant substance abuse;

"(2) proposes a comprehensive and multifaceted approach to eliminating substance abuse;

"(3) encourages the involvement of businesses and community leaders in substance abuse prevention activities;

"(4) demonstrates a commitment and a high priority for preventing substance abuse; and

"(5) demonstrates support from the community and State and local agencies for efforts to eliminate substance abuse.

"(f) REVIEW.—Each coalition receiving money pursuant to the provisions of this section shall submit an annual report to the Attorney General, and the appropriate State agency, evaluating the effectiveness of the plan described in subsection (b)(5) and containing such additional information as the Attorney General, or the appropriate State agency, may prescribe. The Attorney General, in conjunction with the Director of the Bureau of Justice Assistance, and the appropriate State agency, shall submit an annual review to the committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Such review shall—

"(1) evaluate the grant program established in this section to determine its effectiveness;

"(2) implement necessary changes to the program that can be done by the Attorney General; and

"(3) recommend any statutory changes that are necessary.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section, $15,000,000 for fiscal year 1992, $20,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994."

(c) AMENDMENT TO TABLE OF SECTIONS.—The table of sections of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end thereof the following:

"SUBPART 4—COMMUNITY COALITION ON SUBSTANCE ABUSE

"Sec. 531. Grants to combat substance abuse."

AMENDMENT NO. 540

At the appropriate place, insert the following:

SEC. . PILOT PROGRAMS AT STATE AND LOCAL PRISONS TO PROVIDE COMPREHENSIVE SUBSTANCE ABUSE TREATMENT SERVICES FOR WOMEN.

Section 511 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3761) is amended by—

(1) inserting "(a) IN GENERAL.—" before "Of the total amount"; and

(2) adding at the end thereof the following:

"(b) CHILD AND YOUTH SOCIAL SERVICE PROGRAM STUDY.—Notwithstanding subsection (a), not less than $3,000,000 of the amount appropriated under this subpart shall be used for—

"(1) providing or arranging for the provision of intervention services for female inmates, including—

"(A) substance abuse and addiction treatment services, with priority given to discrete treatment units which provide detoxification if necessary, comprehensive substance abuse education, the development of individualized treatment plans, individual and group counseling, and ongoing access to self-help groups;

"(B) support services (such as counseling to address family violence and sexual assault);

"(C) life skills training (such as parenting and child development classes);

"(D) education services (such as literacy and vocational training); and

"(E) after care services; and

"(2) providing or arranging for the provision of ancillary social services and such other assistance that will ensure that women can maintain contact with their children and their children will receive age appropriate substance abuse education and counseling.".

SPECTER AMENDMENT NO. 541

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

On page 86, strike line 3 and all that follows through page 114, line 10, and insert the following:

TITLE VIII—POLICE CORPS AND LAW ENFORCEMENT TRAINING AND EDUCATION ACT

SEC. 801. SHORT TITLE.

This title may be cited as the "Police Corps and Law Enforcement Training and Education Act".

SEC. 802. PURPOSES.

The purposes of this title are to—

(1) address violent crime by increasing the number of police with advanced education and training on community patrol;

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement; and

(3) assist State and local law enforcement efforts to enhance the educational status of law enforcement personnel both through increasing the educational level of existing officers and by recruiting more highly educated officers.

SEC. 803. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps and Law Enforcement Education.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director (referred to in this title as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in subtitle A and the Law Enforcement Scholarship program established in subtitle B and shall have authority to promulgate regulations to implement this title.

SEC. 804. DESIGNATION OF LEAD AGENCY AND SUBMISSION OF STATE PLAN.

(a) LEAD AGENCY.—A State that desires to participate in the Police Corps program under subtitle A or the Law Enforcement Scholarship program under subtitle B shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b); and

(2) administering the program in the State.

(b) STATE PLANS.—A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this title;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program;

(4) if the State desires to participate in the Police Corps program under subtitle A, meet the requirements of section 816; and

(5) if the State desires to participate in the Law Enforcement Scholarship program under subtitle B, meet the requirements of section 826.

Subtitle A—Police Corps Program

SEC. 811. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "academic year" means a traditional academic year beginning in August or September and ending in the following May or June;

(2) the term "dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(A) was no more than 21 years old; or

(B) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director;

(3) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of the baccalaureate degree; or

(B) a course of graduate study following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses;

(4) the term "participant" means a participant in the Police Corps program selected pursuant to section 813;

(5) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; and

(6) the term "State Police Corps program" means a State police corps program approved under section 816.

SEC. 812. SCHOLARSHIP ASSISTANCE.

(a) SCHOLARSHIPS AUTHORIZED.—(1) The Director is authorized to award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d).

(2)(A) Except as provided in subparagraph (B) each scholarship payment made under this section for each academic year shall not exceed—

(i) $10,000; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of scholarship assistance received by any one student under this section shall not exceed $40,000.

(4) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(5)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) REIMBURSEMENT AUTHORIZED.—(1) The Director is authorized to make payments to a participant to reimburse such participant for the costs of educational expenses if such student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d).

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) $10,000; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $13,333.

(C) The total amount of payments made pursuant to subparagraph (A) to any one student shall not exceed $40,000.

(c) USE OF SCHOLARSHIP.—Scholarships awarded under this subsection shall only be used to attend a 4-year institution of higher education.

(d) AGREEMENT.—(1) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director. Each such agreement shall contain assurances that the participant shall—

(A) after successful completion of a baccalaureate program and training as prescribed in section 814, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(B) complete satisfactorily—

(i) an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study);

(ii) Police Corps training and certification by the Director that the participant has met such performance standards as may be established pursuant to section 814; and

(C) repay all of the scholarship or payment received plus interest at the rate of 10 percent in the event that the conditions of subparagraphs (A) and (B) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) In the event that a scholarship recipient is unable to comply with the repayment provision set forth in subparagraph (B) of paragraph (1) because of a physical or emotional disability for good cause as determined by the Director, the Director may substitute community service in a form prescribed by the Director for the required repayment.

(C) The Director shall expeditiously seek repayment from participants who violate the agreement described in paragraph (1).

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties;

shall be entitled to the scholarship assistance authorized in this section. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or dependent child's gross income shall not include any amount paid as scholarship assistance under this section or as a stipend under section 814.

(g) APPLICATION.—Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

(h) DEFINITION.—For the purposes of this section the term "institution of higher education" has the meaning given that term in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

SEC. 813. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant must—

(A) be a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to section 815(c)(5), including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience.

(2)(A) Until the date that is 5 years after the date of enactment of this title, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 815, and such a participant shall be subject to the same benefits and obligations under this subtitle as other participants, including those stated in section (b)(1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 815, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this Act that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall assure, as nearly as possible, annual graduating classes of 20,000. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to areas of greatest need.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit applicants from among members of racial and ethnic groups whose representation on the police forces within the State is substantially less than in the population of the State as a whole. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, a 4-year institution of higher education (as described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)))—

(A) as a full-time student in an undergraduate program; or

(B) for purposes of taking a graduate course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(f) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

SEC. 814. POLICE CORPS TRAINING.

(a) IN GENERAL.—(1) The Director shall establish programs of training for Police Corps participants. Such programs may be carried out at up to 3 training centers established for this purpose and administered by the Director, or by contracting with existing State training facilities. The Director shall contract with a State training facility upon request of such facility if the Director determines that such facility offers a course of training substantially equivalent to the Police Corps training program described in this subtitle.

(2) The Director is authorized to enter into contracts with individuals, institutions of learning, and government agencies (including State and local police forces), to obtain the services of persons qualified to participate in and contribute to the training process.

(3) The Director is authorized to enter into agreements with agencies of the Federal Government to utilize on a reimbursable basis space in Federal buildings and other resources.

(4) The Director may authorize such expenditures as are necessary for the effective maintenance of the training centers, including purchases of supplies, uniforms, and educational materials, and the provision of subsistence, quarters, and medical care to participants.

(b) TRAINING SESSIONS.—A participant in a State Police Corps program shall attend two 8-week training sessions at a training center, one during the summer following completion of sophomore year and one during the summer following completion of junior year. If a participant enters the program after sophomore year, the participant shall complete 16 weeks of training at times determined by the Director.

(c) FURTHER TRAINING.—The 16 weeks of Police Corps training authorized in this section is intended to serve as basic law enforcement training but not to exclude further training of participants by the State and local authorities to which they will be assigned. Each State plan approved by the Director under section 816 shall include assurances that following completion of a participant's course of education each participant shall receive appropriate additional training by the State or local authority to which the participant is assigned. The time spent by a participant in such additional training, but not the time spent in Police Corps training, shall be counted toward fulfillment of the participant's 4-year service obligation.

(d) COURSE OF TRAINING.—The training sessions at training centers established under this section shall be designed to provide basic law enforcement training, including vigorous physical and mental training to teach participants self-discipline and organizational loyalty and to impart knowledge and understanding of legal processes and law enforcement.

(e) EVALUATION OF PARTICIPANTS.—A participant shall be evaluated during training for mental, physical, and emotional fitness, and shall be required to meet performance standards prescribed by the Director at the conclusion of each training session in order to remain in the Police Corps program.

(f) STIPEND.—The Director shall pay participants in training sessions a stipend of $250 a week during training.

SEC. 815. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon satisfactory completion of the participant's course of education and training program established in section 814 and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 812, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 812(d)(1)(C) shall not apply.

SEC. 816. STATE PLAN REQUIREMENTS.

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 813;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) whose size has declined by more than 5 percent since July 10, 1991; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment following completion of Federal training, or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan; and

(10) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

SEC. 817. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $100,000,000 for each of fiscal years 1992 and 1993, and $200,000,000 for each of fiscal years 1994, 1995, and 1996.

Subtitle B—Law Enforcement Scholarships Program

SEC. 821. SHORT TITLE.

This Subtitle may be cited as the "Law Enforcement Scholarships and Recruitment Subtitle".

SEC. 822. DEFINITIONS.

As used in this subtitle—

(1) the term "Director" means the Director of the Bureau of Justice Assistance;

(2) the term "educational expenses" means expenses that are directly attributable to—

(A) a course of education leading to the award of an associate degree;

(B) a course of education leading to the award of a baccalaureate degree; or

(C) a course of graduate study following award of a baccalaureate degree;

including the cost of tuition, fees, books, supplies, and related expenses;

(3) the term "institution of higher education" has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965;

(4) the term "law enforcement position" means employment as an officer in a State or local police force, or correctional institution; and

(5) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

SEC. 823. ALLOTMENT.

From amounts appropriated pursuant to the authority of section 11, the Director shall allot—

(1) 80 percent of such funds to States on the basis of the number of law enforcement officers in each State compared to the number of law enforcement officers in all States; and

(2) 20 percent of such funds to States on the basis of the shortage of law enforcement personnel and the need for assistance under this subtitle in the State compared to the shortage of law enforcement personnel and the need for assistance under this subtitle in all States.

SEC. 824. PROGRAM ESTABLISHED.

(a) USE OF ALLOTMENT.—

(1) IN GENERAL.—Each State receiving an allotment pursuant to section 823 shall use such allotment to pay the Federal share of the costs of—

(A) awarding scholarships to in-service law enforcement personnel to enable such personnel to seek further education; and

(B) providing—

(i) full-time employment in summer; and

(ii) part-time (not to exceed 20 hours per week) employment during a period not to exceed one year.

(2) EMPLOYMENT.—The employment described in subparagraph (B) of paragraph (1) shall be provided by State and local law enforcement agencies for students who are juniors or seniors in high school or are enrolled in an accredited institution of higher education and who demonstrate an interest in undertaking a career in law enforcement. Such employment shall not be in a law enforcement position. Such employment shall consist of performing meaningful tasks that inform such students of the nature of the tasks performed by law enforcement agencies.

(b) PAYMENTS; FEDERAL SHARE; NON-FEDERAL SHARE.—

(1) PAYMENTS.—The Secretary shall pay to each State receiving an allotment under section 823 the Federal share of the cost of the activities described in the application submitted pursuant to section 827.

(2) FEDERAL SHARE.—The Federal share shall not exceed 60 percent.

(3) NON-FEDERAL SHARE.—The non-Federal share of the cost of scholarships and student employment provided under this subtitle shall be supplied from sources other than the Federal Government.

(c) LEAD AGENCY.—Each State receiving an allotment under section 823 shall designate an appropriate State agency to serve as the lead agency to conduct a scholarship program, a student employment program, or both in the State in accordance with this subtitle.

(d) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the programs conducted pursuant to this subtitle and shall, in consultation with the Assistant Secretary for Postsecondary Education, issue rules to implement this subtitle.

(e) ADMINISTRATIVE EXPENSES.—Each State receiving an allotment under section 823 may reserve not more than 8 percent of such allotment for administrative expenses.

(f) SPECIAL RULE.—Each State receiving an allotment under section 823 shall ensure that each scholarship recipient under this subtitle be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other law enforcement personnel of the same rank and tenure in the office of which the scholarship recipient is a member.

(g) SUPPLEMENTATION OF FUNDING.—Funds received under this subtitle shall only be used to supplement, and not to supplant, Federal, State, or local efforts for recruitment and education of law enforcement personnel.

SEC. 825. SCHOLARSHIPS.

(a) PERIOD OF AWARD.—Scholarships awarded under this subtitle shall be for a period of one academic year.

(b) USE OF SCHOLARSHIPS.—Each individual awarded a scholarship under this subtitle may use such scholarship for educational expenses at any accredited institution of higher education.

SEC. 826. ELIGIBILITY.

(a) SCHOLARSHIPS.—An individual shall be eligible to receive a scholarship under this subtitle if such individual has been employed in law enforcement for the 2-year period immediately proceeding the date on which assistance is sought.

(b) INELIGIBILITY FOR STUDENT EMPLOYMENT.—An individual who has been employed as a law enforcement officer is ineligible to participate in a student employment program carried out under this subtitle.

SEC. 827. STATE APPLICATION.

Each State desiring an allotment under section 823 shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may reasonably require. Each such application shall—

(1) describe the scholarship program and the student employment program for which assistance under this subtitle is sought;

(2) contain assurances that the lead agency will work in cooperation with the local law enforcement liaisons, representatives of police labor organizations and police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out this subtitle;

(3) contain assurances that the State will advertise the scholarship assistance and student employment it will provide under this subtitle and that the State will use such programs to enhance recruitment efforts;

(4) contain assurances that the State will screen and select law enforcement personnel for participation in the scholarship program under this subtitle;

(5) contain assurances that under such student employment program the State will screen and select, for participation in such program, students who have an interest in undertaking a career in law enforcement;

(6) contain assurances that under such scholarship program the State will make scholarship payments to institutions of higher education on behalf of individuals receiving scholarships under this subtitle;

(7) with respect to such student employment program, identify—

(A) the employment tasks students will be assigned to perform;

(B) the compensation students will be paid to perform such tasks; and

(C) the training students will receive as part of their participation in such program;

(8) identify model curriculum and existing programs designed to meet the educational and professional needs of law enforcement personnel; and

(9) contain assurances that the State will promote cooperative agreements with educational and law enforcement agencies to enhance law enforcement personnel recruitment efforts in institutions of higher education.

SEC. 828. LOCAL APPLICATION.

(a) IN GENERAL.—Each individual who desires a scholarship or employment under this subtitle all submit an application to the State at such time, in such manner, and accompanied by such information as the State may reasonably require. Each such application shall describe the academic courses for

which a scholarship is sought, or the location and duration of employment sought, as appropriate.

(b) PRIORITY.—In awarding scholarships and providing student employment under this subtitle, each State shall give priority to applications from individuals who are—

(1) members of racial, ethnic, or gender groups whose representation in the law enforcement agencies within the State is substantially less than in the population eligible for employment in law enforcement in the State;

(2) pursuing an undergraduate degree; and

(3) not receiving financial assistance under the Higher Education Act of 1965.

SEC. 829. SCHOLARSHIP AGREEMENT.

(A) IN GENERAL.—Each individual who receives a scholarship under this subtitle shall enter into an agreement with the Director.

(b) CONTENTS.—Each agreement described in subsection (a) shall—

(1) provide assurance that the individual will work in a law enforcement position in the State which awarded such individual the scholarship in accordance with the service obligation described in subsection (c) after completion of such individual's academic courses leading to an associate, bachelor, or graduate degree;

(2) provide assurances that the individual will repay the entire scholarship awarded under this subtitle in accordance with such terms and conditions as the Director shall prescribe, in the event that the requirements of such agreement are not complied with unless the individual—

(A) dies;

(B) becomes physically or emotionally disabled, as established by the sworn affidavit of a qualified physician; or

(C) has been discharged in bankruptcy; and

(3) set forth the terms and conditions under which an individual receiving a scholarship under this subtitle may seek employment in the field of law enforcement in a State other than the State which awards such individual the scholarship under this subtitle.

(c) SERVICE OBLIGATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), each individual awarded a scholarship under this subtitle shall work in a law enforcement position in the State which awards such individual the scholarship for a period of one month for each credit hour for which funds are received under such scholarship.

(2) SPECIAL RULE.—For purposes of satisfying the requirement specified in paragraph (1), each individual awarded a scholarship under this subtitle shall work in a law enforcement position in the State which awarded such individual the scholarship for not less than 6 months nor more than 2 years.

SEC. 830. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 to carry out this subtitle.

(b) USES OF FUNDS.—Of the funds appropriated under subsection (a) for any fiscal year—

(1) 75 percent shall be available to provide scholarships described in section 824(a)(1)(A); and

(2) 25 percent shall be available to provide employment described in sections 824(a)(1)(B) and 824(a)(2).

Subtitle C—Reports

SEC. 831. REPORTS TO CONGRESS.

(a) ANNUAL REPORTS.—No later than April 1 of each fiscal year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President of Senate. Such report shall—

(1) state the number of current and past participants in the Police Corps program authorized by subtitle A, broken down according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation);

(2) describe the geographic dispersion of participants in the Police Corps program;

(3) state the number of present and past scholarship recipients under subtitle B, categorized according to the levels of educational study in which such recipients are engaged and the years of service such recipients have served in law enforcement;

(4) describe the geographic, racial, and gender dispersion of scholarship recipients under subtitle B; and

(5) describe the progress of the programs authorized by this title and make recommendations for changes in the programs.

(b) SPECIAL REPORT.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall submit a report to Congress containing a plan to expand the assistance provided under subtitle B to Federal law enforcement officers. Such plan shall contain information of the number and type of Federal law enforcement officers eligible for such assistance.

SEYMOUR AMENDMENT NO. 542

(Ordered to lie on the table.)

Mr. SEYMOUR submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . PENALTIES FOR CRIMINAL GANG ACTIVITY.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Chapter 1 of title 18, United States Code, as amended by section —, is amended by adding at the end thereof the following new section:

"§ 22. Criminal gang activity

"(a) PROMOTING, FURTHERING, OR ASSISTING IN CRIMINAL GANG ACTIVITY.—Except to the extent that a greater sentence is provided by other law (including subsection (b)), a person who willfully promotes, furthers, or assists in any felonious criminal conduct by the members of a criminal gang, with knowledge that its members engage or have engaged in a pattern of criminal gang activity, shall be imprisoned not less than 1 year and not more than 3 years.

"(b) ENHANCED PENALTY.—(1) Except as provided in paragraph (2), a person who is convicted of an offense shall, if the offense is committed knowingly for the benefit of, at the direction of, or in association with a criminal gang, in addition and consecutive to any term of imprisonment imposed for that offense, be imprisoned not less than 3 years and not more than 7 years.

"(2) In the case of an offense described in paragraph (1) that results in serious bodily injury to any person, the offender, in addition and consecutive to any term of imprisonment imposed for that offense, shall be imprisoned not less than 7 years and not more than 12 years.

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'criminal gang' means a criminal syndicate of 3 or more persons that is commonly known by a certain name or identifier that engages in or has as 1 of its purposes engaging in offenses involving—

"(A) assault, homicide, firearms, explosives, robbery, burglary, extortion, fraud, or witness intimidation; or

"(B) possession, possession for sale, sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances (as those terms are defined in the Controlled Substances Act (21 U.S.C. 801 et seq.)); and

"(2) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty.".

(b) TECHNICAL AMENDMENT.—The table of chapters for chapter 1 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"22. Criminal gang activity.".

LEAHY AMENDMENT NO. 543

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place, insert the following:

SEC. . FEDERAL BUREAU OF INVESTIGATION ACCESS TO CERTAIN TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director in the Intelligence Division, may—

"(1) request the name, address, length of service, and toll billing records if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillence Act or clandestine intelligence activities that involve or may in-

volve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

Notwithstanding any other provisions of this Act, the last paragraph of section 2515 of title 18, United States Code, as amended by this Act, is repealed.

WOFFORD AMENDMENT NO. 544

(Ordered to lie on the table.)

Mr. WOFFORD submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the end of the bill, add the following:

TITLE —ENVIRONMENTAL COMPLIANCE

SEC. 01. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 33 the following new chapter:

"CHAPTER 34—ENVIRONMENTAL COMPLIANCE

"731. Environmental compliance audit.
"732. Definition.

"§ 731. Environmental compliance audit

"(a) IN GENERAL.—A court of the United States—

"(1) shall, when sentencing an organization for an environmental offense that is a felony; and

"(2) may, when sentencing an organization for a misdemeanor environmental offense,

require that the organization pay for an environmental compliance audit.

"(b) APPOINTMENT OF INDEPENDENT EXPERT.—The court shall appoint an independent expert—

"(1) with no prior involvement in the management of the organization sentenced to conduct an environmental compliance audit under this section; and

"(2) who has demonstrated abilities to properly conduct such audits.

"(c) CONTENTS OF COMPLIANCE AUDIT.—(1) An environmental compliance audit shall—

"(A) identify all causes of and factors relating to the offense; and

"(B) recommend specific measures that should be taken to prevent a recurrence of those causes and factors and avoid potential environmental offenses.

"(2) An environmental compliance audit shall not recommend measures under paragraph (1)(B) that would require the violation of an environmental statute, regulation, or permit.

"(d) COURT-ORDERED IMPLEMENTATION OF COMPLIANCE AUDIT.—The court shall order the defendant to implement the appropriate recommendations of the environmental compliance audit.

"(e) ADDITIONAL STANDING TO RAISE FAILURE TO IMPLEMENT COMPLIANCE AUDIT.—(1) The prosecutor, auditor, any governmental agency, or any private individual may present evidence to the court that a defendant has failed to comply with the court order under subsection (d).

"(2) When evidence of failure to comply with the court order under subsection (d) is presented pursuant to paragraph (1), the court shall consider all relevant evidence and, if the court determines that the defendant has not fully complied with the court order, order appropriate sanctions.

"§ 732. Definition

"For the purposes of this chapter, the term 'environmental offense' means a criminal violation of—

"(1) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly known as the Clean Water Act);

"(3) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(4) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

"(5) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(6) the Solid Waste Disposal Act (42 U.S.C. 5901 et seq.);

"(7) title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.) (commonly known as the Safe Drinking Water Act); and

"(8) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).".

(b) TECHNICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 33 the following new item:

JEFFORDS AMENDMENT NO. 545

(Ordered to lie on the table.)

Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following new subsections and redesignate accordingly:

SEC. . COMPLIANCE ASSURANCE ACTIVITIES.

(a) REPORTING OF COMPLIANCE ASSURANCE ACTIVITIES.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Administrator of the Environmental Protection Agency (referred to in this subsection as the "Administrator") shall promulgate regulations that require that each applicant for a permit issued under any provision of law described in paragraphs (1) through (8) of section 732 of title 18, United States Code, and each permittee issued a permit under any such provision, shall, as a condition to receiving any such permit, agree to—

(A) evaluate the internal control system of the entity that is the subject of the permit for the purpose of complying with clause (ii) of subparagraph (B);

(B) set forth in the application for the permit or a renewal of the permit—

(i) a brief descrípton of the environmental compliance assurance system of the permittee (or applicant for a permit) used to ensure compliance with Federal, State, and local environmental laws;

(ii) an assessment of whether such environmental compliance assurance system (after any corrections of the type referred to in clause (iv)) reasonably assures compliance with Federal, State, and local environmental laws; and

(iii) the disclosure of any material weaknesses that have been identified in such environmental compliance assurance system and that have not been substantially corrected by the permittee (or applicant for a permit) as of the date of the filing of the permit application or permit renewal application.

(2) REQUIREMENT FOR REGULATIONS.—

(A) In promulgating regulations under this subsection, the Administrator shall ensure that—

(i) no such regulation shall create an unreasonable economic burden with respect to—

(I) small communities (as defined in subparagraph (B)); and

(II) small business concerns (as defined in section 3(a)(1) of the Small Business Act (15 U.S.C. 532(a)(1)); and

(ii) to the maximum extent possible, such regulations shall not impede the development or implementation of a consistent compliance assurance program by any permittee (within a single facility or among multiple facilities).

(B) For the purposes of this paragraph, the term "small community" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 5,000 individuals.

(3) CONFIDENTIALITY OF AUDITS.—(A) Except as provided in subparagraph (B), notwithstanding any other provision of law, the Administrator may not require any permittee that is subject to the requirements of this section to submit any information (including any report or record) with respect to an environmental audit conducted by the permittee with respect to a facility of the permittee if such information is not otherwise required to be submitted pursuant to the reporting requirements under this subsection.

(B) If the Administrator determines that the information described in subparagraph (A) is material to a criminal investigation, the Administrator may require a permittee to submit such information.

(d) RULE OF CONSTRUCTION.—The amendments made by this Act shall not be construed as preempting regulation by the States of any activities that may have an effect on the environment.

WIRTH AMENDMENT NO. 546

(Ordered to lie on the table.)

Mr. WIRTH submitted an amendment intended to be proposed by him to the bill S. 1241, supra, as follows:

At the appropriate place in the bill, insert the following new title:

TITLE —PUBLIC INFORMATION CONCERNING FAILED DEPOSITORY INSTITUTIONS

SEC. 01. AVAILABILITY OF EXAMINATION REPORTS.

(a) PUBLIC AVAILABILITY OF INFORMATION.—The appropriate Federal banking agency shall publish and make available to the public reports of all examinations of each institution described in section 04, or of a holding company of such institution, that was performed by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or any predecessor thereof, during the 5-year period preceding the transfer, failure, or receipt of funds described in section 04.

(b) DELAY OF PUBLICATION.—If the appropriate Federal banking agency makes a determination in writing that publication of an examination report would seriously threaten the safety or soundness of an insured depository institution, such agency may delay publication of the examination report for a reasonable period of time, not to exceed 6 months from the date of the transfer, failure, or receipt of funds described in section 04.